IMPLEMENTATION OF THE LAND USE ACT 1978: THE IMPACT ON LAND DEVELOPMENT IN OWERRI CAPITAL TERRITORY

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DECLARATION

I hereby declare that this thesis has been written by me and it is a record of research work. It has not been presented before in any previous application for higher degree or reputable presentation else where. All quotations are distinguished by quotation marks and source of information are acknowledged by means of references.

Godwin Onwumere

CERTIFICATION

This thesis Titled IMPLEMENTATION OF THE LAND USE ACT 1978: THE IMPACT ON LAND DEVELOPMENT IN OWERRI CAPITAL TERRITORY by Godwin Onwumere meets the regulations governing the award of the degree of Master of Science in Urban and Regional Planning of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentations.

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DEDICATION

To my dearly beloved and only wife Nkennaya Dorothy with a sincere love and a deep sense of gratitude for constantly bringing sunshine into my life, abiding very closely with deep understanding and maturity in the struggles and enduring the sight of missing a husband's love at the time she needed it most.

ACKNOWLEDGEMENT

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I also wish to express my gratitude to all members of staff of the Town Planning Division, Ministry of Lands, survey and Urban Planning, Owerri, the Lands Division Ministry of Lands Survey and Urban Planning, Owerri and the Land Use and Allocation Committee, Owerri especially the Deputy Director, Town Planning and Open Spaces Division Mr. E. E. Nze for the assistance he gave to me when I needed to print some plans.

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Above all to God be all the glory for seeing me through the programme To all others who contributed but not mentioned I say thank you and God bless.

Godwin Onwumere
October 1990.

THESIS ABSTRACT

IMPLEMENTATION OF THE LAND USE ACT 1978: THE IMPACT ON LAND DEVELOPMENT IN OWERRI CAPITAL TERRITORY.

Land occupies a central position in the economic and social advancement of all countries. Its concept differs from one discipline to another. It is in the legal concept that is relevant to this research and it has to do with land policy. Land policy is conceived as a wide range of social control measures which regulate ownership, allocation, development and control of use of land.

The system of land tenure before the inception of the land use Act 1978 in Northern Nigeria was differint from that of Southern Nigeria. In the north, the parctice was guided by the provisions of the land Tenure laws 1962. But in the South the customary land tenure system was practiced. The customary Land tenure was in the forms of inherited land right and acquired land right.

The land Use Act 1978 was introduced by the Federal government to intergerate the land tenure system in the north with that in the South. Evaluation of the advantages and disadvantages of land tenure systems before and from 1978 when the land Use Act came into force, was made. At first evaluation of the alternatives the decision was made in favour of land tenure system from 1978.

Research findings show that Imo State government has not been able to complete payment of compensation for the land it acquired in Owerri since the inception of the land Use Act 1978. There is unnessary delay in securing statutory right of occupancy and getting consent from the Governor to allienate property. There is also the issue of allocation of plots to persons who do not have the resources to develop them and

consequently proliferation of undeveloped plots scattered all over the layouts in Owerri. The issue of nigh cost of land is not left out.

In view of these short comings recommendations and proposals are made for effective implementation of the Land Use Act. 1978 that will bring about effective Land development in Owerri. To ensure that compensation is paid to the dispossessed original land owners the Owerri Capital Development Authority charged with the development of the Capital Territory should charge enough premium covering cost of compensation for economic crops and trees in respect of each layout of all developable plots. It should levy appropriate planning rates approved by the Military Governor and which rate would be collected in instalments over a period of 5 to 10 years. With the approval of the Governor it should raise loans from development banks for development of its layouts in accordance to the edict that established the Authority.

Decentralisation and adoption of bottom-top concept is recommended in the processing of applications for statutory rights of accupancy and applications for Governor's approval of consent to mortgage property. Lastly encouragement should be given to both those who have the resources to develop their allocated plots and the low income earners who do not have the resources to develop their allocated plots.

In the end the adoption and use of the Land Use Act 1978 is advocated. Of special note is the word "Act" which had been used instead of decree. This is not with intent to changing the status, therefore the research has assumed that both mean one and the same thing.

Godwin Onwumere.

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GLOSSARY

1.	Alienate		Tranfer
2.	Cadastral	-	registering of lands for purposes of taxation.
3.	Conveyance	-	document that gives full legal rights to land or property.
4.	Easement	-	right over the land of another (example right of way).
5.	Feudalism	-	a system which prevailed in Europe in the middle ages which one held land from the king and tenants - in-chief in return for military services.
6.	feuds	-	a lasting herditary strife between families or clans.
7.	Improvement	-	Changes on the complete natural state of land.
8.	Interest	-	Legal right.
9.	Land banking	-	buying of land threatened with development for some future public or private use.
10.	Litigation	-	Judicial proceeding, law suit.
11.	Property	-	developed or undeveloped land.
12.	Sub feudation	-	The granting of land by one who holds land from and renders homage to a superior.
13.	Tenure	-	ownership and control of land.
14.	Title	-	Claim, right.
15.	Usufructure	-	Using and enjoying produce, benefit or profit of anothers property provided that the property remains undamaged.

CHAPTER ONE

INTRODUCTION

1.10 Statement of the Research Problem

The traditional land tenure system existed in Owerri like in otherparts of Southern Nigeria before the colonial era. Under this system, land belonged to the family or community but never to an individual. All the members of the family or community have equal right to the land but in every case, the head of the family or chief as the case may be, has charge of the land and holds the land in trust for the family or community.

Through the colonisation of the country, the British idea of property law, made an important impact upon the customary conception of land in Owerri, resulting to partial break-up of the system. Many individuals have ownership and deal with their land as and when they wish; not obtaining consent from Government for alienation. Legislations were made to enable Government acquire land by agreement of compensation to the expropriated owners. The Land Use Act 1978 supercedes all the other Acts.

The demand for buildable land outstrips supply in Owerri Capital Territory. One of the reasons is that land is still being sold by individuals in the Capital Territory in spite of the Land Use Act 1978 that vests land comprised in the territory of the state

in the Military Governor of the state. In Works Layout, a standard plot size (15 metres by 30 metres) was sold in open market at ₦18,900 in 1986 and in 1990 it was sold at ₦40,000 (Field survey May 1990).

The State Government allocates plots of land to successful applicants and collects certain fees (development, survey and deed fees). For a standard residential plot size (15 metres by 30 metres) the total fees charged is ₦2,535.50. Before the promulgation of the Land Use Act 1978, plots of land were sold at higher prices than the total fees Government now charges which justifies the objective of the Land Use Act 1978 of seeking to make land readily available at reasonable rate to all. Table 1.01 shows land prices in some locations in Owerri in 1977 and the equivalent worth in 1990.

Table 1.01 Land Prices in Some Locations In Owerri

Location	Price Per Plot (15m by 30m) in 1977	Equivalent Worth in 1990	Remarks
Old Owerri	₦2142.00	₦30613.46	In 1977 ₦1.00 was equivalent to $1.8. In 1990 ₦1.00 is equivalent to $0.1259
Orji	₦1485.00	₦17686.35	
Naze	₦720.00	₦10290.00	
Egbu	₦337.00	₦4823.55	
Amakohia	₦220.00	₦3151.38	
Nekede	₦81.00	₦1157.65	
Irete	₦270.00	₦3858.84	

Source : Acholonu (1979 Page 47).

But access to the allocated plots is becoming difficult. Developers now pay the Government the total fees charged and obtain certificates of occupancy for the allocated plots and at the same time buy the plots from the indigenes. This double deal contribute to the hike in price of the plots and defeats the objective of the Land Use Act 1978. And so what the Act sought to achieve, that is, to make land readily available and at reasonale rate to all is not being achieved.

There are also unnecessary administrative delays in securing statutory right of occupancy and getting consent to alienate property. In layouts for Government development, developments go fast and at a large scale but layouts for private developnent show certain delays. Therefore, there is need to find out what has gone wrong with the implementation of the Land Use Act 1978.

1.20 Aim and Objectives

The aim of this study is to determine what measure could be taken on the implementation of the Land Use Act 1978; for effective land development in Owerri Capital Territory. Accordingly, efforts will be directed towards achieving the following objectives:

i. To examine general concept of land
ii. To examine land tenure system in Northern Nigeria and land tenure system in Eastern Nigeria

iii. To examine the Land Use Act 1978 as Federal Government intervention; the principles and provisions of the Act, the general effects, problems of interpretation of sections of the Act and general problem of the Act.

iv. To examine the creation of Owerri Capital Territory.

v. To examine the Land Use Act 1978 implementation and land development in Owerri Capital Territory; considering the procedures of acquiring land before the Land Use Act 1978; procedure of acquiring land under the Land Use Act 1978 and application of the Act in The Capital Territory.

vi. To summarise main findings and make major recommendations on them and a policy statement on the Land Use act 1978.

1.30 Scope and Limitations

The highlights of this research will include, first an examination of general concept of land in the light of the central position land occupies in the economic and social development of countries and the importance to land development.

This will be followed by analysis of impact of the various changes in land tenure systems, in which

the various land tenure systems prevailing in Northern Nigeria and Eastern Nigeria before the promulgation of the Land Use Act 1978, will be dealt with. Then the introduction of the Land Use Act 1978 as Federal government intervention will be appraised.

A case study of Owerri Capital Territory which can be considered as a good sample of the effect of implementing the Act in Imo state will be undertaken, In the end, main findings on the land tenure system in Owerri before the promulgation of the Land Use Act 1978 and under the Act will be summerised and evaluated. Major recommendations will be made on the chosen alternative for effective land development in the Owerri Capital Territory.

However, there are certain limitations to the research. Though, there has been quite few recent publications on land in Nigeria, there is lack of sufficient literature on the Land Use Act 1978 with regards to physical planning. Therefore, some of the materials used were as a result of interviews with officials of Ministry of Lands, Survey and Urban Planning within Imo State; coupled with my experience in working in the Ministry now that the Land Use Act 1978 is in force. Some of the few articles that appear in the Nigerian news papers could not be used as references because they were rather vague in their comments on the Land Use Act 1978. However,

some relevant ones to the research were referred.

1.40 Methodology of Research

1.4.1 Reconnaisance Survey

Some visits to the study area which aimed at getting a bird's eye view of the whole area were under taken by the researcher at the earliest period of the research in May 1990. The vists helped to clarify tne sizes of the hierachical forms of the localities of Owerri Capital City and Owerri Capital Territory. Owerri Capital City is 72.50 square kilometres and Owerri Capital Territory is 2514.2 square kilometres. An essential result of these visists is tne elimination of areas outside the Capital City and concentrating on layouts and locations in the Capital City in the administering of questionnaire owing to time constraint and financial burden.

In the course of survey, preliminary information revealed that most of the inhabitants in the lay-outs were not owners of the houses they live in. However, few of them owned the houses they live in.

1.4.2 Delimitation of The Study Area

The concept of locality was employed in delimiting the study area. Geopgraphers tradition-ally conceive the hierachical form of locality within the context of Central Place Theory

Accordingly, the components of Central Place Theory were used to achieve a clear delimitation of the study area.

According to Central Place Theory, the importance or centrality of a place will depend on the functions it performs; and since the cost of frequency of demand for these functions vary, then the number of people necessary to sustain them at a place will differ. This is often referred to as the threshold population. At the same time the cost and time involved in travel will outweigh the need for a function which is referred to as range of function.

A function with a low threshold and range will tend to appear in the rural land and in this case outside Owerri Capital Territory. In contrast, a high order function will occur in the urban landscape and in this case towards the centre of Owerri Capital Territory (that is Owerri Capital City). Since the occurence of the function is constrained in this way, then, in order to utilise space most efficiently those places performing high order functions (which in this case live within Owerri Capital Territory) would also perform low order functions (which in this case are areas outside Owerri Capital Territory.

1.4.3 Method of Data Collection

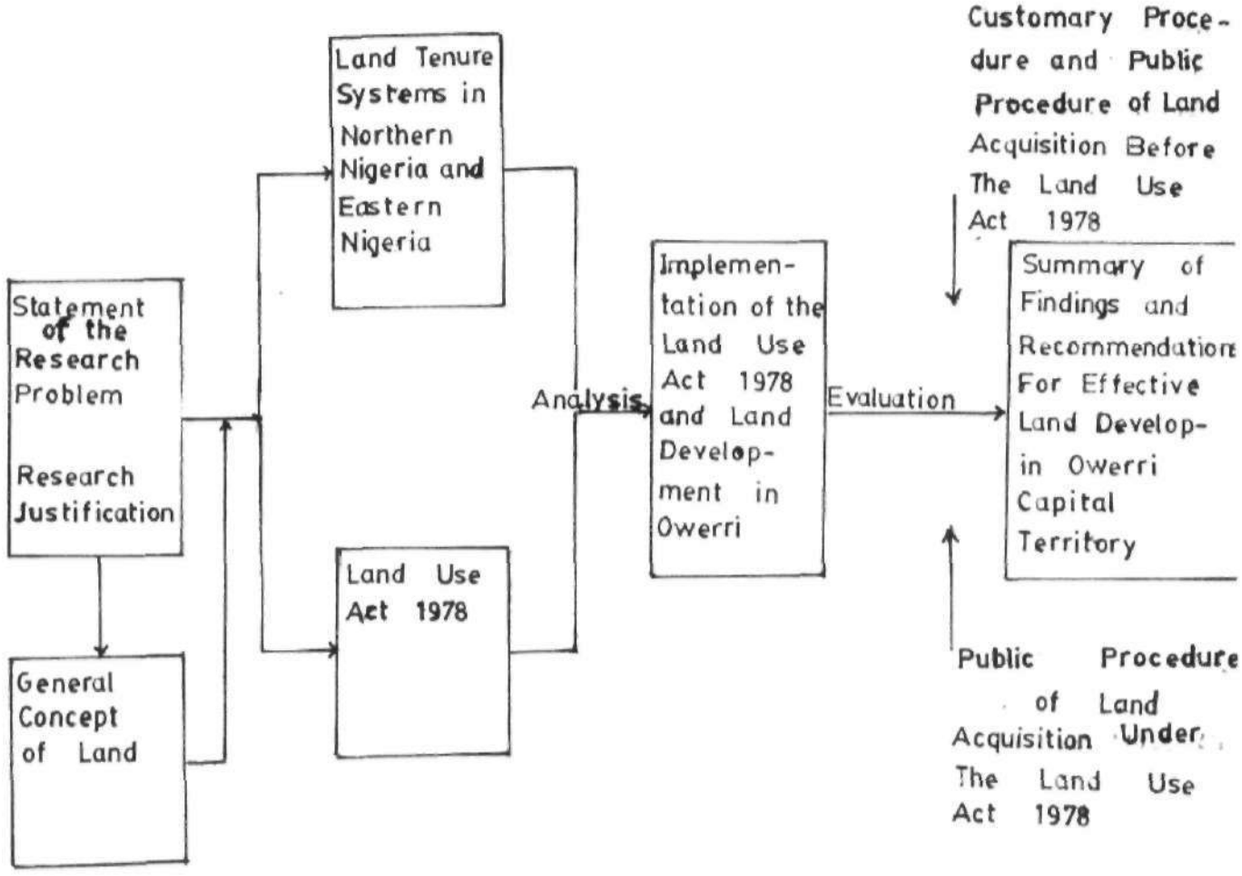
Some information was got through the use of questionnaire. The set of questionnaire drawn and administered, was designed for government officials mainly concerned with land matters as most of the inhabitants in the sample study area (layouts) were not the developers. Some other information was got through informant interviews with the developers who live in the sample area (layouts), other private individuals and other government officials on their views on the Land Use Act 1978 implementation and Land development in Owerri.

Basic information, maps, layout plans which required visiting government offices, and departments were collected. Information was also got from official gazettes, text books, journals, papers presented, newspaper reports, talk after the news and government files. Such jobs which involved measuring, sketching and tracing called for joint participation between the researcher and his assistants.

1.4.4 Sampling Technique

Basically, two forms of data were collected; those that represent verbal subjective evaluation of situations and those that showed response in specified pattern. Both groups were analysed manually and cases of frequencies of response were identified and used.

1·4·5 CONCEPTUAL FRAMEWORK.



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Fig 1-01

1.50 Thesis Structure

The thesis is divided into four sections as illustrated in fig 1.02. Section A, B and C have two chapters each wnile section D has one chapter.

Section A, is made up of chapter one which briefly states the research problem, the aim and objectives of the study, the scope and limitations, methodology of research and justification for the study and chapter two looks at general concept of land.

Section B, is made up of chapter three and chapter four. Chapter three discusses land tenure system in Northern Nigeria looking at the situation before 1962 and under the Land Tenure Law 1963. The chapter also discusses land tenure system in Eastern Nigerian considering the various forms the land tenure system took and the legislations enacted to shapen land law and land administration. Chapter four examined the Land Use Act 1978 as Federal Government intervention; the principles and provisions of the Act, the effects, problem of interpretation of sections of the Act and general problems of the Act.

Section C, consists of chapter five and chapter

1·50 THESIS STRUCTURE

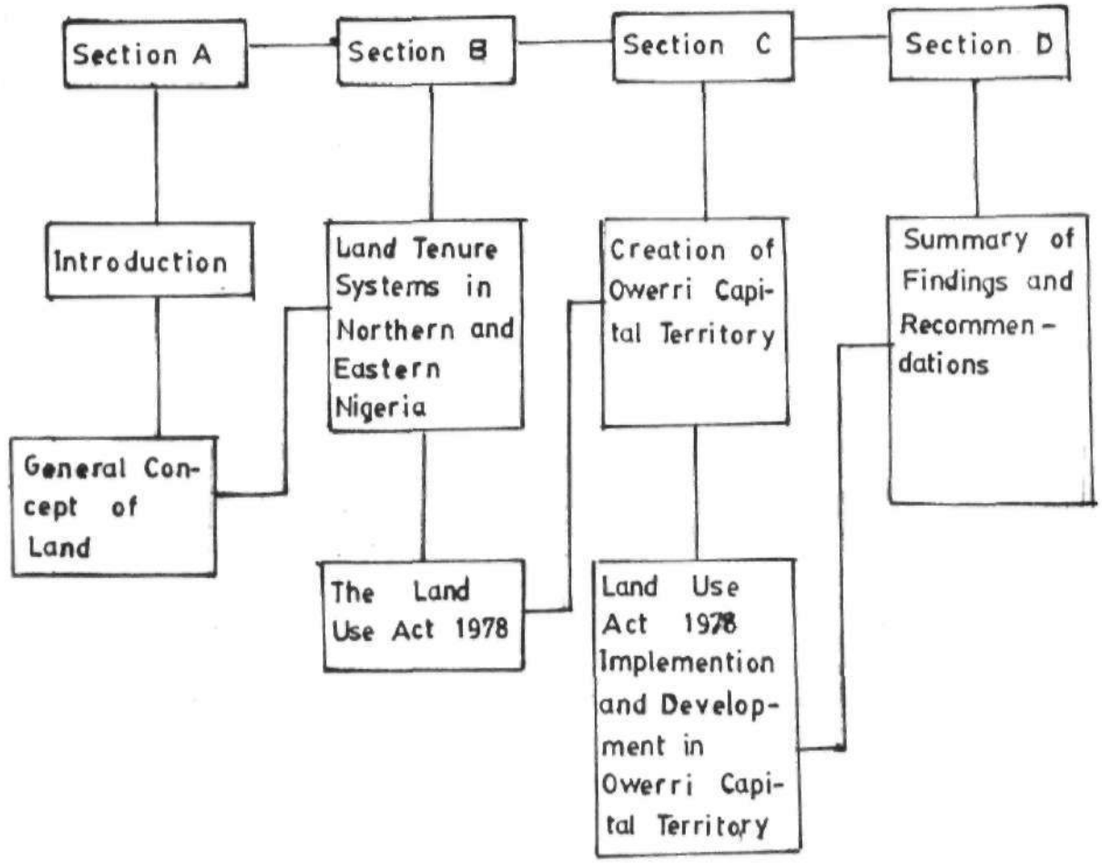


Fig 1·02

five and chapter six. The creation of Owerri Capital Territory is dealt with in chapter five. First, the location and regional setting of old Owerri Town is determined along with its historical background. Second, the area and development strategy of Owerri Capital City, the population trend, land use budget and housing are treated. Then the area designated Owerri Capital Territory and its background information are examined. Chapter six focused on the Land Use Act 1978 implementation and land development in Owerri. The customary procedure and public procedure of land acquisition in Owerri before the Land Use Act 1978 and the public procedure of land acquisition in Owerri under the Land Use Act 1978 are considered.

Section D contains chapter seven which is the last chapter. In this chapter, the summary of main findings of the research is made by stating the advantages and disadvantages of land tenure system before the Land Use Act 1978 and Land tenure system under the Act. Their respective advantages and disadvantages are evaluated and the better alternative is chosen. Recommendations are made considering the main findings on the chosen alternative. Finally a policy statement is made on the Land Use Act 1978.

1.60 Justification For Research

This research can serve as a timely effort to make conscious analysis of the implementation of the Land Use Act 1978 on land development in Owerri Capital Territory.

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

The thought in theabove statements (introductory part of the Land Use Act 1978) is that the transfer from individuals, families, groups or communities ownership of land to public will provide the logical solution to the rising cost of land and shortage of buildable land in the country.

But the practical effectuation of this thought poses some problems. Firstly, land nationalisation is not a policy to be embarked upon lightly as it will arouse keen political controversy and upset social, cultural and economic life of the traditional communities (Nnamani 1989). Secondly, it will

involve financial operations, such as payment of compensation for land acquired from the original owners. Thirdly, it will involve the establishment of a more sophiscated administrative machinery equiped to deal with the whole land in the country (Lich-field 1965). Therefore the nationalisation of land policy may have good intentions but in the implementation of the policy such good intentions may not be realised. And so in trying to solve certain problems other problems are created.

A search for a proper method of implementing the Land Use Act 1978 which will guarantee land development at a rate greater than the rate of development before the Act in Owerri Capital Territory becomes imparative. This study attempts the search.

The main findings of this study can open up the way to chain of ideas, thoughts, debates or policies which can be of practical value in the land development programme in the Capital Territory. In this context, if the major recommendations made on the main findings of the research are implemented, there will be effective land development in Owerri Capital Territory.

CHAPTER TWO

GENERAL CONCEPT OF LAND

2.10 LAND

Land occupies a central position in the economic and social advancement of all countries and is manifested in various ways. In Africa and many developing countries it is a vital source of wealth and a basic high valued resource. It is an important input in subsistence agriculture and at the same time has religious and social connotations (Meek 1968).

Land is an important source of political power to governments and consequently a major instrument for economic and social policy to meet their commitment and the increasing demands for the people in the field of social and economic development. As urban areas develop land can be expected to become a major source of investment. This is already the position of Lagos in Nigeria hence the creation of a new capital territory at Abuja.

In common use of the word, land is dry or solid land as against water. To the economist, it has much wider context-natural resources, including the rivers, oceans, minerals, crops, together with man produced additions from manure to sky scraper. To the lawyer, it connotes proprietary interest in the natural resources, the bundles of rights and duties which attach to any of the varied interest in land

(Lich-field and Darin -Drakin 1980). It is the last concept which is relevant to this study and the issue relates solely to land policy.

2.20 Land Policy

Land policy is conceived as a wide range of social control measures which regulate ownership, allocation, development and control of use of land (Siman 1983). These measures include public statutory laws, administrative rules and regulations, customary practices and accepted moral convention relating to land.

2.2.1 Ownership of Land

Land ownership is concerned with access of people to land on which to develop (Mabogunje et al 1978?. Land ownership could be free hold which involves absolute ownership or leasehold which involves contract letting for a specified time. Freehold has certain advantages. It provides security for credit and the sense of absolute ownership is an incentive to development. Free-hold provides opportunity for large profits when the value of land has substantially increased. It confers freedom from control by landlords, whether they are private individuals or governments. In countries like Nigeria Ghana, India and Cyprus absolute ownership of land offers social status.

But there are dangers associated with freehold. Excessive buying of land, often, for social reasons more than could be developed has been one of the principal causes of indebtedness. The ability to borrow money on freehold property has been a curse to peasant proprietors who had not learned the proper use of credit. Freehold opens the door to speculation and under development. In the absence of specific land policies against partition, there is the danger of excessive fractioning, so that what is left of a holding may no longer be able to support the holder and his family. The danger increases with the increase in population and the degree of available land.

Advantages of the leasehold system are that the landlord is more able to ensure an economic use of land, take steps to meet new conditions and insist on measures which will prevent the impoverishment of the soil and destruction of the forest. Secondly any substantial land values which are generally due to expenditure by the landlord acrue to the landlord. The disadvantages of the leasehold system include non provision of security for credit on the part of the landlord. The tennant is bond and controlled by the landlord.

Land is regarded as a form of preperty, the ultimate ownership of which must rest with some

person or body (Liversege 1945).

Feudal system of land ownership is well illustrated by the manorial system which was practised throughout most of northern and western parts of Europe in the middle ages. In England the practise reached the fullest under the rule of William the conqueror. Under this system the unit of administration and tenure was the manor, a small community corresponding roughly to the village of today. The inhabitants of the manor owed allegiance to the lord of the manor". He in turn owed allegiance to a greater lord and so on through various stages of subinfeudation to the king. This system was designed to distribute responsibility for mobilisation of military forces, the collection of taxes and administration of justice in circumstances where communications were poor and the detailed control of central government within the manor the inhabitants held their land of the lord as he did of a greater lord or the king. They were bound to the land and could not leave the manor in which they were born except by permission of the lord. The inhabitants of the manor are divided into tenants and slaves. The latter has practically no legal rights. Thr former comprised serfs (labourers) and cottars (farm workers), the distinction being based mainly upon extent of their land holding. The manorial lands consisted of home

farm of the lord and the tenants lands. The tenants did not pay anything in the form of contractual rent for their holdings but they rendered certain customary dues to the lord of the manor; prominent among is labour service.

In a way the feudal system illustrated by the mamorial system is land nationalisation. This system has been in Britain since the time of William the Conqueror. He left with the British, the concept of land tenure in which the most complete form of ownership, fee simple, absolute in possession is really a holding of the Crown (Lich-field 1965). In those middle ages of Europe, the system of land tenures was bound up with jurisdictional and governmental rights and the changes which took place at that period, were largely due to altrations in the series of duties and obligations which these rights connoted. For centuries the bulk of English legislation and attention of English lawyers were concerned with the definition or adjustment of class of rights. But at a later period when the holding of land became progressively dissociated from rights of personal obligations which had their origin in political or social relations and when economic fact exercised an increasing influence over the tenures under which land was held, the change was rapid and more clearly defined - a gradual assimilation

of the law of real property to that of personal property (Meek 1968).

Feudal systems in some respect similar to the manorial system of northern Europe existed also in Africa. The system referred to is found in Ashanti, Ghana with its clearest expression in lands conquered by Ashanti kings. In Ashanti every piece of land belonged to some one. Even at the extinction of a family group whereby land could be ownerless, Ashanti law made full provision for such emergency as such land would be at once absorbed by the "stool" or native authority under which the extinct family had it.

The king of Ashanti was acknowledged as the lord paramount of all the land in his loosely united kingdom. The greater chiefs became tenants of the king, continuing, however, to enjoy undisputed rights to their lands as the clans and families did theirs. Everybody was subject to certain services to the king; the most important was obligation to perform military service. Labour services were exacted also: every man or woman would work on the chief's farm a few days a year. Besides authority over tribal lands, the king had the powers of a landowner over stool land which was family property in possession of the family from ancient times or derived from conquest, gift, forfieture or purchase. This corresponds to home farm of the manorial lord. The lesser chiefs have their own family land, derived from

ancient claim or from grant by the overlord.

Customary system of land ownership in some parts of Africa and Asiatic countries were in two forms: inherited rights over land and acquired rights over land. Inherited rights were over waste land, common land, family land and personal land. Waste lands are land over which no individuals or communities have yet exercised rights. Small strips of such lands exist in Nigeria along the Niger and Cross Rivers and along smaller streams where areas of swamp and high forest have not yet been brought under cultivation. The common land remain uncleared because no one has yet wanted it or farming is restricted there lest the village should lose a means of defence, shade or source of wood and fibre supplies. Family land is land which all its members have rights over than those which go with personal ownership and it varies in different localities. The word family is usually known as a village group or clan (Chubb 1961). Personal land is land which an individual has inherited and which is at his personal disposal and not subject to family approval, land acquired on pledge, mortgage, exchange and land held on lease. It is not in the traditional conception of a holding in freehold or fee simple which carried with it the right of an individual to sell, openly and outright, land to any applicant in some parts of Africa like Nigeria and Ghana. But in the more thickly populated areas and elsewhere where a consciousness of the cash value of land was

growing, land was openly sold out but not to strangers, who may be defined as persons from another clan. Land acquired on pledge is a system by which anyone short of land or who wishes to expand his farming activities could do so by approaching individuals or families with land to spare or who were in financial difficulties. The essence of the pledge is that it is redeemable at anytime. Mortgage of house property was not common in the African society. It was usual for individuals to exchange plots of land to their mutual convenience as a form of acquired right under customary system of land ownership. Lastly, is land held on lease which is distinguished from land held on pledge in that it is not terminable at the wish of the land lord and is usually for a fixed term which may or may not be renewable. By far the commonest form of lease hold was tenancy for one year.

There was also public system of land ownership in Nigeria. Through this system (Acquisition Ordinances and Laws of the states) land was compulsorily acquired from individuals or communities and eventually used for some public purposes; either for building an institution or for the development of layouts for residential purposes. By this system of land ownership the freehold interest is passed on from individuals or communities to government and the individuals to which the plots are allocated get leasehold interest.

2.2.2. Land Allocation For Urban Development

Land becoming increasingly available for urban development depends in the first instance on planning powers (Solesbury 1974). Second, is that there being a plan available in form of development plan to guide actual land development. Third is effective land administration.

2.2.3. Planning Powers

Planning powers include town and country planning ordinance, zoning regulation, subdivision regulation and building regulations. The present era of building development and planning can be said to have started in 1948 which was operative year for many of the provisions of Town and Country Planning Act 1947 and therefore the beginning of planning control in the United Kingdom (Green 1981). The Act created a totally new system of planning. The state passed control over development to local planning authorities in the countries and county broughs (larger towns and cities). They were given the statutory responsibility to prepare development plans, revising them every five years and administering planning control.

In Nigeria it was not until 1946 that the first planning ordinance which embraced the whole country, the Nigerian Town and Country Planning

Ordinance was passed. The ordinance as a measure was necessary because of the changes that were taking place in the country : an increasing population, a growing commercial sense, a development of land contrary to the public interest and the need to plan the whole country for the benefit of the community. The aim of the ordinance, as contained in the ordinance itself, was "for the replanning, improvement, and development of different parts of Nigeria. The ordinance provided for the appointments of planning authorities and secured control of development through the preparation of planning shemes made by planning authorities.

Zoning regulation like subdivision regulation and building regulations is a planning power to protect and promote the health, safety, convenience and general welfare of a community (Ervin et.al. 1977). Functionally zoning is a means for spatially separating "incompatible" land uses. Preventing a slaughter-house from being located in a residential neighbourhood is an example. The mechanics of separation require the designation of specific land use districts to include varying densities of residental use (single, multiple or high density multiple family), different types of commercial activity (neighbourhood, limited, highway or central business districts), varying degree of industrial use (light, medium or heavy) and other classifications including institutional and agricultural uses. The number of

classifications varies among municipalities and usually increases with size of a municipality and diversity of its social and economic structure. Within each landuse district various regulations and restrictions apply to the use of land (permitted uses, lot areas, set back requirements, parking facilities, open space requirements), the hieght, size and use of building and the densities of population and buildings.

The evolution of zoning in the twentieth century helps to understand its present structure. Land zoning regulation prior to the twentietn century dealt primarily with safety and nuisances. Banning gunpowder manufacture and storage from populated areas represented safety measures and nuisances like tannaries or brick kilns were restricted from residential and business districts. Zoning was introduced towards the end of the nineteenth century as a means of discriminating against Chinese immigrants to California. The Chinese laundries many of which were flourishing social centres were seen as a clear fire risk and public nuisance and so were banned from most areas thereby putting nearly three hundred Chinese laundries out of business (Delafons 1975). Zoning for land use planning began in Boston in the United States of America from 1904 to 1905 when districts with varying heights were established and in Los Angeles from 1909 to 1911 when seven industrial districts were separated from residential areas. But

the first comprehensive zoning ordinance came from a 1910 New York Commission on heights of buildings which investigated the impact of sky-scrapers on community health and safety (Ervin et. al. 1977). The commission's 1913 report recommended regulations controlling the height, bulk and use of buildings in different districts. By 1913, the city of New York had fifty buildings over twenty storeys high and none over thirty storeys. It was feared that if nothing were done to control the blocking off of light and air from other buildings, property values in the city will deteriorate (Robinson 1977). Following New York's lead other municipalities in the country tentatively passed zoning laws. Most were modest efforts, designed primarily to separate residences from industry and commerce.

Zoning as a development tool has been criticised on a number of grounds. Some of these charges include first, that it is a passive tool, primarily telling what the owner "should not" do with his plot. Second, it is too narrow a tool, failing to account for regional needs and placing too much power in the hands of a great many local jurisdictions which are unwilling or unable to consider regional or state concerns. Third, zoning as a tool for development is exclusionary tool often requiring uses of land so costly that low or moderate income housing is precluded. Fourth, zoning results in land acquiring an equity value that makes it difficult, if not impossible, to change its use in the future. Last, it is unable to

regulate the timing of development; for instance the 1910 New York commission report was described as crude, lax, too much concerned with conserving existing values and too little concerned with guiding future growth and development of the local jurisdiction.

An evaluation of zoning regulation on cost-benefit frame work shows that zoning regulation may be desired on the grounds of efficiency for two objectives:

- the provision of an optimal level of land related public facilities and
- the reduction of costs of providing certain public services.

On the other hand the potential costs of zoning regulations include : the costs of planning, administering and implementing zoning regulations. Secondly the increased cost of residential, commercial and industrial development due to restrictiveness of zoning regulations.

Zoning on account of certain legel inhibitions has seldom been used effectively to guide the place of location of new development (Delafon 1975) A potentially more effective tool for this purpose is subdivision regulations. Subdivision regulations are controls governing not the use of land or type of building but the preliminary stages of development : the layout of streets and lots and the provision of necessary services. They specify the conditions for dividing undeveloped land into lots and offering for sale. The basis for subdivision control is land registration in which the government has power to grant

or with hold on its on terms. The typical ordinance covers subdivision naming, street naming, easement, street layouts, curbs and gutters side walks, sanitary sewers utilities, erosion, sediment controls and swimming pools.

The control of building works in the interest of the public is exercised by the use of building regulations. The building regulations require the submission of plans and other information concerning building materials, methods of construction and other matters of health and safety such as resistance to moisture, insulation against fire, heat loss and sound, refuse disposal, drainage, ventilation and structural stability. A procedure is laid down for the submission of plans and there is a statutory time limit, during which the authority's reply "pass" or "fail" is given to the applicant. In practice the planning authorities building control offices are generally willing to discuss any possible complications before plans are submitted or during the approval process so that additional information can be produced or adjustment made. By this means rejections are avoided and considerable time saved. The building regulations cover all but the minor aspects of building construction, siting and services affecting health and so planning authorities may require specific details of any building work proposed. The authority considers plan, issues decision on them and carry out inspection of work in progress. When plans are deposited the authority has a period of time to give a decision. The applicant can appeal against a decision of the authority made pursuant

to the provisions of the building regulations to the Commissioner charged with planning matters in the state But this does not authorise any one to carryout work in contravention of the regulations. As work proceeds a building inspector visits the site from time to time to ensure that the work is being carried out in accordance with the building regulation under which the plan was approved. The planning authority must be informed when it was proposed that work should be begun and in addition at certain stages in the construction they must be notified so that inspection can be made before work proceed further. They must be notified when work is completed and ready for final inspection.

2.2.4 Development Plans

In England two systems of development plans are in operation : the development plans made in accordance with 1947 Act (old style) and the development plans made in accordance with 1968 Act (new style) adopted the device now contained in Part II of 1971 Act

The rigid town planning schemes of former planning enactments were replaced under the 1947 Act by the "old style" development plans. Every local planning authority had to carry out a survey of its area and within three years from July 1, 1948 had to prepare a development plan based on the survey. An important characteristic

of the old style development plan was that it allocates land to specific uses (residential, agricultural, industrial and others) whether by carrying out development or not and also defined sites of proposed public works. It also indicated the stages by which the development is to be carried out. Before a development plan with respect to the whole of the area has been approved, a development plan relating to part of that area may be prepared.

The "old style" development plan consists of a basic map and a written statement of objectives and such other map or maps as may be appropriate to the proposals contained in the basic map and statement of objectives. Such other map or maps may be a town map or inset maps showing particular proposals related to specific areas. These maps may be comprehensive development area maps defining any areas which should be developed or redeveloped as a whole. It could be street authorisation plan which defines sites of a proposed road or as land required for the widening of existing road.

The written statement of objectives includes:

i. A summary of the main proposals of the development plan with descriptive matter to illustrate the proposals of the development plan.

ii. An indication of the stages by which any development proposed by the plan should be carried out.

iii. A statement about the purposes for which the

area of any comprehensive development area map is to be developed or redeveloped as a whole

iv. A statement about residential densities

v. A statement of the principal services envisaged in any settlement intended as a centre for community services.

In the case of any contradiction between two maps, the map which is to a larger scale prevails. In case of any contradiction between the maps and the written statement, the latter prevails. The secretary of state may approve the development plan with or without modifications. The development plan is reviewed at least every five years though it may be reviewed at any time. The review is based on the carrying out of a new survey.

The criticism of "old style" development plans were two fold. First, the process of plan making and confirmation was extremely lengthy. The minister obliged to hold an inquiry into all objections and confirmation of plans often took considerably long time. As earlier stated the plan identified specific pieces of land and thus affected property values. Objections could be numerous and based not on policy matters but on special pleading in defence of vested interests. Secondly, the content of the "old style plan" lost both of two things. It was not sufficiently detailed to provide a precise guide to the citizen as to how decision were likely to be made. At the same time, the

requirement of a decision made it rigid and inflexible and liable to be obsolete when changes took place in matters outside the authority's control; for example, the closure of a factory or a new road project. Because the emphasis was on the allocation of land to specific uses it was difficult to express in the plan the matters which transcended the local authority's geographical boundaries; for example one urban authority might plan on the assumption that its surplus population would be accommodated by neighbouring rural authorities. But plans produced by its neighbouring authorities would not necessarily take this factor into consideration.

The 1971 Act prescribed two kinds of development plans (new-style); one called structure plan which outlines general policy and the other consequential local plan which makes detail proposals within the area covered by the structure plan. The main elements of the "new style" development plan are the survey, the structure plan and the local plan.

Every local authority must institute a survey of its own area. The survey may be carried out eventually by outside consultants. The matter to be kept under review include the principal physical and economic characteristics of the area and if necessary, of any neighbouring areas; the size, composition and distribution of population; the communications, transport system and traffic; and any changes already projected and the effect which those changes are likely to have on

the development of the area.

Structure plans have to be prepared by country councils and confirmed by the secretary of state. They differ from the "old style" plans. First there is no land use allocation map. The plan consists of written statement of generalised objectives, accompanied by diagrams, illustrations and descriptive matter, being treated as part of the plan itself. This is intended to lessen delay at confirmation stage and thereby reducing the number of objections to the plan. Secondly the 1971 Act expressly requires a wide range of factors be considered in the plan including social and economic characteristics of its area, transport and distribution of population. And so the written statement of generalised objective must formulate the local planning authority's policy and general proposals in respect of the development and other uses of land including measures for the improvement of the physical environment and the management of traffic. The socio-economic characteristics to which the policy has to be formulated may include housing, industry and commerce, transportation, shopping, education other social and community services, recreation and liesure, conservation, town-scape, landscape, utility services and distribution of population and employments.

For the relationship of these proposals to the general proposals, first, the structure plan contains the following:

- The existing structure of the area and the present needs and opportunities for change.

- Any change already projected or likely to occur, which may materially affect the plan and the effect those changes are likely to have
- The extent to which town development is being or is to be carried out in the area
- The existing size, composition and distribution of population and state of employment and estimates at the future times.
- The regard of the planning authority to the economic planning of the region
- The regard of the planning authority to social policies
- The regard of the planning authority to the resources likely to be available for carrying out the proposals
- The broad criteria to be applied in respect of the control of development.

Second, it indicates the "action areas" selected for comprehensive treatment during a period of ten years in accordance with the subsequent local plan. The authority is obliged to consider these factors in relation to the neighbouring areas which affect its own area and to state the relationship of its policies to those of its neighbours. One of the tasks of the structure plan is to translate national and regional plan policies into local terms. Moreover under the Town and Country Planning Amendment Act 1972 local authorities can combine together to produce joint structure plans.

A local plan is a plan prepared by the local authorities as a more detailed plan for any part of the area worked out under the general protection of a prevailing structure plan. Three types of local plans may be distinguished. They are a district plan, an action plan and a subject plan. A district plan is based on a comprehensive consideration of development and land use in the area. An action plan is a local plan for an action area. A subject plan is called by the name of the subject based on a consideration of a particular description of development or land use.

Development plans in the other European countries show that similar tendencies to that of England in the evolution of planning can be intensified. There is the tendency to consider mixed urban rural areas or even a complex neighbouring towns (the city region) as a

planning unit. There are efforts to intergrate economic and physical planning, in the framework of regional and sub-regional planning. There is increasing concern with problems of environment and there is the participation of a larger part of the population to the planning process.

In the development plans in African countries some of the countries' site plans, master plans, and other land use plans are prepared by the department of twon and country planning, but must be approved by the local planning committee and by the minister or commissioner charged with physical planning matters.

2.2.5 Effective Land Administration

Vital in land administration, are the issues of land allocation and land registration. In those countries colonised by Britain notably in the West Indies land has been held in forms of tenure similar to those prevailing in Great Britain. Rights arising in such lands have been determined on analogies drawn from the English common law of property. In certain other countries like Cyprus features of the English law defining the relations of landlord and tenant have been reproduced by local enactments. But in many other countries like Ghana and Zanzibar where the indigenous system of land tenure prevail the development of land rights has tended to be

influenced by the fact that side by side the land held under native forms of tenure there, have considerable areas held under the forms recognised by English law (Meek 1968).

In these countries land allocated by government to the people for residential, private and industrial enterprises were at earlier stage granted or sold on terms equivalent to freehold though like in Nigeria, later policy has preferred leasehold. A free use of power of allocation may facilitate the formation of large scale holdings and though this has economic advantage in respect of those types of development which require the use of capital and organised management it has other possibilities of less desirable character. Thus it may result in creation of large scale undeveloped holdings.

In Nigeria there has been several instances of undersirable allocation of land. Certain government agencies like the Nigerian Railway Corporation have received land allocations of extravagant nature all over the country; the same is true of some educational institutions and research institutes (Adedeji and Rowland 1984). Allocations of this nature have frequently inhibited effective planning and implementation. To help remedy this position a review should be carried out of the land required in past years by governments and their agencies, with the objective of relinquishing and land required to meet immediate needs. Moreover regular

annual reviews of the position should subsequently, be carried out by the federal, state and local governments; so that where it is evident that a statutory body is not making full use of land, the right already given can be withdrawn and subjected to developmental conditions.

Another aspect of extravagant land use in Nigeria is the government reservation areas (GRA). In many towns like Enugu, Umuahia, Kaduna and Zaria residential plots in these areas are extremely large, some times up to one acre (0.4047 hectares) in extent. As a result the cost of providing and maintaining public services and utilities in such areas of low density is very enormous. These were colonial ideas of the past which should not be allowed to continue or repeat. New developments in government reserved areas throughout in the country should be linked to considerable higher and medium densities and so more economy in the provision of essential services.

Ghana resembled Nigerian before the Land Use Act 1978 in Nigeria in that there are two distinct systems of land administration. In Ghana, government right from the colonial days found it possible to assume a general control of land. There were large areas of unclaimed land which could be preserved for the benefit of the community and so in 1927, Land and Native Rights Ordinance was enacted on the model of Northern Nigeria legislation

(Meek 1968). Provision was made for the granting of rights of certificate of occupancy and it was laid down that no native could alienate his plot to non native without the consent of the governor. In 1931, this ordinance was revised; the term "native lands" was substituted for "public lands" and a declaration was added that these native lands were at the disposal of the Governor "for the common benefits of the natives"

But in southern territory of Ghana outside Ashanti, the control of land rested on the family councils.

Government had acquired a very limited area for public purposes and forest reserves. It has assumed no general rights as in the northern territory over land. If it requires land for public purposes it may have to purchase it. All unoccupied land is at the disposal of local or paramount stool (tribal authority) as in the case of Ashanti and family councils as in the case of outside Ashanti. But in order to safe guard native rights and interest and to give protection to non natives seeking title to land, transactions on land in southern Ghana are by the consession ordinance subject to validation by a divisional court. The control over the grant of concessions is therefore, exervised by judiciary body and not by executive authority. This is an unusual feature of land administration for it was quite impossible for a judge to have exact knowledge of land matters as the executive officer on the spot

(Meek 1968).

The position of family councils and stools in regard to land was generally the same in southern Ghana as in other African communities. The people looked to the elders and chief which form the family council to administer land on their behalf. The family council allocated such areas as were sufficient for each sub-division and held the remainder in reserve against the further needs of the future.

But with the development of the cocoa industry the demand for land became greater and this coupled with the spread of English principles of conveyancing led to a rapid growth of private or individual forms of ownership. This time the Ghananian farmer in southern Ghana is so land concious that there is prevalence of litigation over land. Boundary disputes had become increasingly frequent and the result is that many stools and family councils are seriously being rendered poor. The subjects of the stools and communities have been subjected to heavy levies to pay lawyers fees. Land has been in great demand. Strangers are willing to pay large sums of money for land on which to establish farms. The stools and family councils (custodians of community land) welcome this opportunity of "easy money". And so land is allocated to all who come and have money to offer. Cases are frequent of the same land or parts of it being sold twice over and land titles are a fruitful

source of highly expensive litigation in Southern Ghana (Meek 1968).

Another aspect of land administration is land registration. In many countries of the world, the system of land administrations has been given a more precise and established form by the institution of a procedure for the public registration of conveyances and/or for the maintenance of public record of titles. These two processes serve different purposes and may exist side by side; but the maintenance of a public record of titles has a more far reaching effect than mere registration of conveyances. This procedure involves a cadastral survey and a record prepared after detailed local investigation of titles of the right of holders who become liable to the payment of land revenue. It is of the essence of the record that it should be kept continuously up-to-date, by entering all changes due to succession, sale, mortgage or the like.

It is a general observation that where there is little pressure on the land or where considerable areas of waste or unused land are still available for occupation in a community, the existence of indeterminate or ill defined rights in land does not pose a serious disadvantage. This is because the system of rights is well understood within the community; the differences which arise about the use of land are relatively few and the traditional methods of adjusting them are

adequate for the purpose. But a time comes when a procedure appropriate to an "extensive" system of using land become unsuitable for its more intensive use; indeterminate or ill defined rights are then a source of uncertainly and insecurity, and prejudice the development of land. The situation is a fruitful cause of litigation as is the case in southern Ghana as earlier mentioned; and litigation becomes all the more burdensome when the courts have no certain standards on which to pronounce judgement. There are instances quoted in Africa wnere persons desiring to acquire rights in land have found themselves obliged to compound with five or six parties one after tne other claiming the right to dispose of them. This is why land registration is necessary.

The maintenance of a record of titles is however, expensive as it must be continuous if it must serve its purpose. But the cost is worth it because of the benefits First, land that is registered is easier to transfer and therefore more saleable. If the land market is to work properly, land and transactions should be registered. Once facts are recorded and individuals are given titles or documents, land will be bought and sold with less obstacles, andthis helps the pace of development. Further, land registers, besides being associated with property tax systems can also bring in substantial transaction fees like alienation fees. Morever they are of great

value to agencies responsible for infrastracture and services, as information gathered from the registry becomes the basis for maps.

Land developers favour an efficient land registration system because it reduces transaction costs. They do well when they can buy and develop the land quickly and they have less difficulty getting sub-divisions titled and loans approved. In a broader sense, land registration helps establish order (Holstein 1989). According to him in small rural communities, everyone knows who owns what and if disputes arise, they can be readily resolved. But in urban environments, where there is less sense of community, it is important to have some system to confirm rights. Without it, there can be chaos like corruption, forgery, family feuds, even killings over who owns what. Feuds are common and sometimes they reach the courts. And because in many countries, there are backlogs of hundreds of thousands of court cases, it can take a generation before some feuds are settled.

For individuals, land registration is both a type of protection and means to obtain credit. It benefits the rich and the poor. Land registrations are particularly important for the poor; because if they have no way to prove their rights, as is usually the case in the informal land market, they cannot show they bought a piece of property or land. They are therefore very vulnerable to

those with false or competing claims and can be dispossessed by a judicial process. Once people can prove legal title, however, it becomes more difficult for others more powerful, even governments, to deprive them of their rights. People also have a better chance of getting a fair price for their land if the government needs it for public works.

Further, because individuals feel secure in their rights, they invest in their properties, adding rooms and making other improvements. And these improvements have a multiplier effect increasing values and the supply of rental housing, which means more housing for the people. Individuals are more likely to get bank loans approved if they have proof of their rights. Banks are more apt to lend to those who want to build homes, for example, and to give credit, say, to open a business, if a title can be produced as a collateral, something that the bank can claim if the borrower does not repay a loan.

Though land registration has lots of benefit, not everyone stands to gain. While it may be said that no one openly opposes the idea of introducing land registration some groups or professions have strong interest in maintaining that the system continue as it has been without land registration. Lawyers, for example, benefit from disputes or confusion when no system of titling exists. In The essence of land

registry, people purchasing properties must hire lawyers to enable the judge find out who has the most convincing rights. In addition, large land owners oppose any system that makes the land market more visible and easier to deal in. They do not want the public to see the extent and location of their land-holdings.

2.2.6. Effective Land Policy

Land policy, whether in the developed or developing countries is vital to economic development. Debate exist, however, on the level of sophistication needed in any given land policy since, the greater the precision and amount of information connected to a piece of land the more expensive the process. The deciding factor should therefore, be the use for which the policy is intended. Extremely complex (and therefore extremely costly) systems may not be necessary in any case (Holstein 1989).

Occasionally, complexities arise in the steps associated with a land policy. Although the process may seem straight forward, it could be that the data for the parts of the process are collected by agencies concerned with land matters; for instance the Department of Lands and the Department of Justice and that

that the data do not work well together. Complexities may arise in one part identifying the location and boundaries of the parcel of land and describing it usually with a diagram by the Lands Department and the other part attempting to document the legal rights associated with the land, like who has the rights and whether they are freehold or leasehold by the Department of Justice. Difficulties may also appear in a land policy if the traditional owners of the land interests and values are not taken into consideration in the formulation of the policy.

Land policies have led to political and social upheavels. Where they have not been carefully formulated and/or executed they have led to economic stagnation. But where they are well formulated and/or executed they bring about economic development and nation's advancement. Karouzis (1977) noted that it was astonishing that the Ottoman Code which was appropriate under the Sultans of four centuries ago remained in force sixty eight years after the occupation of Cyprus by the British. The registers prepared for Mulk and Arazi Mirie (categories of land) had imperfect descriptions, highly inaccurate and unuseful, They have been

described as the worst "headaches" left behind to the British Administration in Cyprus. With its many categories of land, each subject to separate laws relating to possessions, transactions and successions; the whole system had become highly complicated and sometimes almost unworkable. Land fell into one category and trees and buildings (improvements) into another; with the result that in thousands of cases the land belonged to one owner or group of owners, while the improvements belonged to other owners. In the Ottoman Code, the laws of inheritance were also complex and antiquated. Not only were the shares of inheritors different, for different categories of property but for immoveable property held in private ownership, they varied according to the religion of those concerned (Meek 1968). The separate ownership of land and trees had been a fruitful source of litigation and the laws of inheritance had been a principal cause of the excessive fragmentation and subdivision of holdings that characterised the land tenure of Cyprus.

But under the carefully formulated and executed land policy - Immovable Property (Tenure, Registration and Valuation) Law 1945, the Ottoman categories of immovable property known as Mulk,

Arazi Mirie, Arazi Metrouke and Arazi Mevat have been abolished and all the immovable property is now owned, held and enjoyed subject to the simplified provisions of the new law. The provisions of this law are far reaching and their influence in the post 1946 years is of invaluable importance to the government and people of Cyprus.

Land policy should stimulate land development and improve the status of the people. According to Holstein (1989), in Thailand the government spent about twenty United States dollars ($20) for each parcel of land registered in nine provinces in a World Bank-supported land-titling project. It charged property owners only a small fee of four dollar ($4) at the time of the action, thus heavily subsidising the effort. But the government gained heavily later by charging transfer or alienation fees at the time of subsequent land transactions as the percentage of the sale price.

"On the average, ten percent of urban land properties in Thailand are sold every year", Hoisten noted. Because of this high turnover, the Thai government got $200 million in 1988; the bulk from transfer fees amounting to about ten percent of the sale price on each transaction against the government agency's overhead cost of $24 million. If the government had not an effective land policy system there would not have been as many sales, which in turn, would have meant less in transfer fees. But

with the system set up to issue documents quickly and efficiently, and with the housing finance system operating, people got access to credit as they could produce the documents they needed as collateral. These and other elements stimulated land development and improved the status of the people of Thailand.

Lastly land policy should be designed to receive mass support in the implementation. If the people are to be encouraged to adopt a land policy and become part of the system, they must be convinced such policy is in their interest. A balance must be maintained between what a government hopes to achieve and the public benefit; because, if the provisions of the policy are difficult, tney will act as deterrence. So, for effective land policy authorities should have a clear idea of what people are prepared to pay or sacrifice in return for what they percieve as benefits.

CHAPTER THREE

LAND TENURE IN NIGERIA

3.10 The System of Land Tenure In Northern Nigeria

The system of land tenure in Northern Nigeria can be divided into two periods : the situation before 1962 and the situation from 1962 (The Land Tenure Law Chapter 59 (1963).

3.20 The Situation Before 1962

The developments in the customary land tenure in Northern Nigeria is tied to the political developments in the region. The influence of islam introduced by the Hausa Kings and more regorously by the Fulanis in the centralised emirates of Sokoto, Katsina, Zaria, Kano and Borno replaced to some extent the group concept of land ownership with individual ownership. The traditional rulers called Emirs were the custodians of the land. They compulsorily acquired land held under a customary right of occupancy for public purposes. They had the right to declare specific areas as areas for future development, agricultural holdings, communal grazing areas, residential and trading areas. They could develop land by settling communities on vacant lands and providing for settlement out of over populated areas.

A lasting change in the land tenure system

was effected by the British jurisdiction, acquired over areas ruled by the Fulani Emirs. This was supposed to have transferred any ultimate title to land previously claimed by the Emirs to the Crown. By this the feudal pattern thus disappeared and the rights of traditional authorities became administrative than propreitorial. In other parts of Northern Nigeria although chiefs were heads of communities proportional rights lay with the communities.

3.30 The Situation From 1962 (The Land Tenure Law Chapter 59 (1963)

The system of land tenure in Northern Nigeria results from an imposition of British statute upon an existing concept of land enjoyment. Thus, the Land and Native Ordinance 1916 transferred all native lands to the people of Northern Nigeria and the Governor became the guardian of these rights. The important feature of this system is that the land is to be enjoyed and not to be owned. And as a result of this feature all tenure is by leasehold right and is ultimately controlled by the Governor.

The Land and Native Ordinance 1916 was re-enacted with some amendments to Land Tenure Law of 1962. Fig. 3.01 illustrates the means by which interest in land is transferred from the

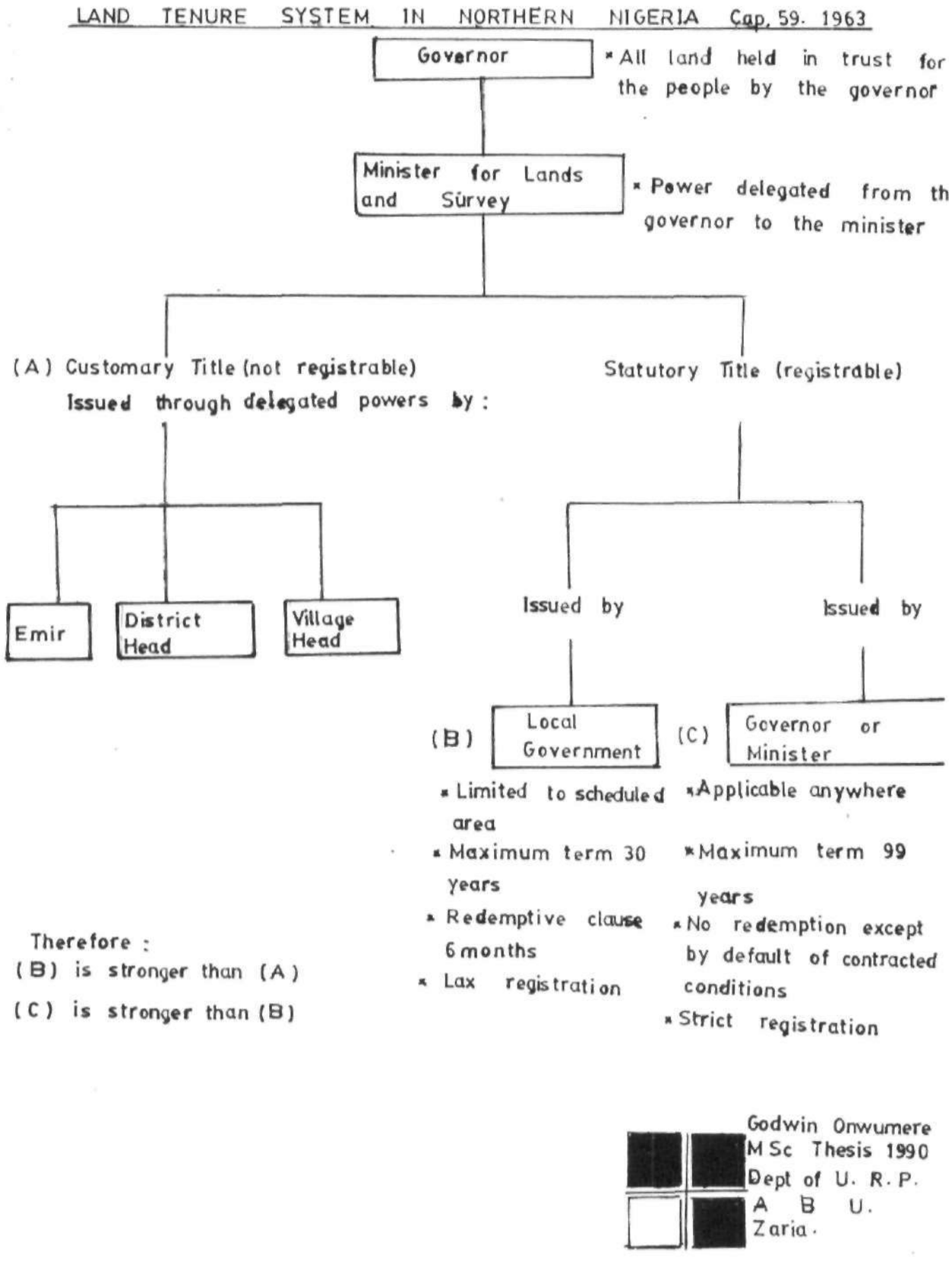

LAND TENURE SYSTEM IN NORTHERN NIGERIA Cap. 59. 1963
Governor
* All land held in trust for the people by the governor
Minister for Lands and Survey
* Power delegated from th governor to the minister
(A) Customary Title (not registrable)
Issued through delegated powers by :
Statutory Title (registrable)
Emir
District Head
Village Head
Issued by
Issued by
(B) Local Government
(C) Governor or Minister
* Limited to scheduled area
* Maximum term 30 years
* Redemptive clause 6 months
* Lax registration
*Applicable anywhere
*Maximum term 99 years
* No redemption except by default of contracted conditions
* Strict registration
Therefore :
(B) is stronger than (A)
(C) is stronger than (B)
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Zaria.

Fig 3·01

Governor to the user. A compromise has been reached between the feudal practice and the need to modernise land tenure. This compromise has been made possible by considering the enjoyment from the customary tenure on one hand and statutory on the other. Because the pressure upon land in the rural area is of such degree as the feudal system could contain, it is maintained that a policy of non interference on the part of the Central government is reasonable and acceptable. However, in the more crowded areas of urban development a cosmopolitan society has created the need for a stricter and more sophiscated control of land enjoyment. This has given rise to a statutory tenure. So the customary tenure is fairly relaxed with little or no evidence in writing as to the conferred rights whereas statutory tenure is witnessed by certificate of one kind or another.

Statutory title confers a greater security than customary title because of the written evidence of statutory title. The Land Tenure Law states that no non-native may enjoy customary tenure and defines a native as a person whose father is a member of one of the indigenous tribes of Northern Nigeria. This means that a non-native must obtain statutory title. Therefore, the activities of non-natives are more clearly recorded than natives. A further distinction is made upon racial basis between non-natives and aliens which gives rise to the two forms of statutory title as can

be seen in fig 3.01. One is issued by the Local government which satisfies the requirements of most non-natives other than aliens and the other issued by the Central government; designed particularly for aliens. This means that a native and non-native may enjoy the Central government issued title but the form an alien may enjoy is statutory title issued by the Central government. The form of title issued by the Central government is the strongest and therefore serves well the need of foreign investment.

The title takes the form of a grant of a right to occupy and enjoy land under certain agreed conditions. This grant is termed certificate of occupancy. Thus, the certificate is a record of an agreement between two parties, the governor on the one hand and the holder on the other and is therefore, a deed. An integral part of the certificate is a plan of the subject area to which the agreement refers. The registry is thus the registry of deeds. Registration of Central government issued title is strict while registration of Local government issued title is less strict. The registry itself, takes two forms to suit the two types of statutory title. A central registry exists for all Central government issued titles and provincial registeries for Local government titles.

The Governor designates certain areas as schedule areas for Local government issue of statutory title and

only within these areas may Local governments issue title. Generally, schedule areas are restricted to urban areas and are primarily meant to restrict the control and the settlement of non-natives. Title issued by Local government outside schedule area is invalid. Thus, any statutory title outside a schedule area must be issued by the Central government which is empowered to issue statutory title anywhere. There is also redemptive clause which enables definite priority of security to be evolved.

The authority, vested on the Governor by parliamentary Act is delegated to the Minister who becomes responsible for the administration of land and survey. Approval of statutory title outside schedule areas is the prerogative of the Minister; of statutory right or title inside schedule areas is that of the Local government in whose jurisdiction the schedule area is situated. Customary title is granted by traditional administation representative; whether he be Emir, District Head or Village Head. However, most of these duties are being taken over by the Local government as they are within schedule areas.

3.40 <u>The System of Land Tenure In Eastern Nigeria</u>

The system of land tenure in Eastern Nigeria is the customary land tenure.

3.50 Customary Land Tenure System

The customary land tenure system is of two forms namely, inherited rights over land and acquired rights over land.

3.5.1 Inherited Rights Over Land

Under inherited rights over land, the term "communal land" is used; which convey the impression that every member of the community has equal right over the land so described. Everywhere except in most densely populated areas there is land over which the village possesses common right and each adult male of that village has the right to farm a particular portion every year in accordance with the rotational cycle. In such areas each farmer of whom there may be hundreds, demarcates the boundaries of his own particular plot, sometimes with earth redges. Land rights exercised in the following lands :

Wasteland

This is land over which no individual or communities have yet exercised rights or where no rights exist (Chubb 1961). Small strips of such land exist along the Niger and Cross Rivers and along smaller streams where areas of swamps and high forests have not been brought under cultivation.

But even lands which have gone out of cultivation due to erosion and which can truly be termed waste, are at the disposal of those, or their descendants who last farmed them.

Common land

This is a land of uncleared forest which remain uncleared because no one has yet wanted it or because farming is forbidden there lest the village should lose a means of defence, shade or source of firewood and fibre supplies. This land is referred to as "bad bush" (Chubb 1961). The fear of bad bush is waning as adventurous men now clear portions of its edge without calamitous results. Land so cleared becomes the property of the man who clears it and is inherited by his sons. This type of land is most commonly sold outright. In the main, the availability of land determines the tenure and it is where the pressure is greatest, that few remaining areas of common land are most rapidly decreasing.

Family land

The natives of Eastern Nigeria have a segmentary lineage system. All the people born in a village believe themselves to have descended ultimately from a common ancestors (Osadolor 1984).

Each family is responsible for sale of land. Land registries are organised on clan basis. Because of non coordination of the families in land sales there are instances of multiple claims of compensation when land is required for public purposes and a parcel of land is sold. This brought about conflicts and litigations. Thus land registries were instituted to check some irregularities and disputes arising from land in the areas. Any parcel of land sold by any family was registered with the community land registries. It was their esponsibility of the registries to know whether such parcel of land had been sold to someone else or not.

Family land under unified control is constantly decreasing in size since, though an extended family may expand to the stage where it splits into two smaller units, the land at its disposal remains static. With the increase in population which is occuring in most areas, therefore, the individual control and ultimately individual ownership must be the tendency (Chubb 1961).

Personal Land

> By the term personal land is meant land which an individual has inherited or otherwise acquired and which is at his disposal. It is not to family santion. The plots recorded as belonging to individual do not always remain in that condition; since the system of inheritance ensures

that rights over any given plot, though, they are of constant nature are shared on the death of a right holder between his inheritors; each of whom will then have personal rights over his share of subdivided plot. Those whose shares are economically too small to be worth cultivation, frequently dispose of their rights either temporary by way of pledge, mortgage, exchange or lease or permanently by outright sale.

It follows therefore that opportunities exist for accumulation of land by the fortunate and the thrifty and the emergence of land owning class. These land owning class inherit plots of land mainly by assuming the role of protectors over the lands of their extended families which they anticipate will be the subject of litigation with other families. This system of handing over rights to a wealthy or influential individual as a form of insurance against possible loss by litigation is wide spread in Eastern Nigeria. It illustrates that really large areas of land can be acquired by individuals.

3.5.2 Acquired Rights Over Land

Under acquired rights over land form of customary land tenure system in Eastern Nigeria, land rights are exercised in the following manners :

Freehold land

In Eastern Nigeria, initially, the native has no traditional conception of a holding in fee simple, which carried with it the right of an individual to sell openly and outright land to an applicant. But later on, more especially in the more thickly populated areas or else where where a conciousness of cash value of land is growing, land is openly sold outright but with one condition attached; it is not sold to strangers who are defined as people from another clan (Chubb 1961).

This time land values are rising as is the value of small parcels of land occur in so many parts of the region. The existence of recognised sales in so many widely dispersed areas and more common in the thickly populated areas, points to the conclusion that the original conception that land was free and little negotiable is changing. It is becoming increasingly regarded as a marketable commodity.

Land Acquired On Pledge

This system by which anyone short of land or wishes to expand his farming activities can do so with ease by approcaching individuals or families with land to spare or who are in financial difficulties is common in Eastern Nigeria. This

is not only a convinient institution but bears the hope that it may make the problem of resettlement easier of solution. The essence of the pledge system is that it is redeemable at any time at the original pledge price. The rule is that only annual crops may be planted on pledge land and that it may not be built on. The reason is that the erection of building or planting of trees presupposes a long tenancy which may eventually change into actual ownership.

The evasion of the rule has raised in some areas the question of compensation for betterment when the land is redeemed. In some cases that came before courts tha land has for so long been in the possession of its present occupier that they have ignored the customary law and planted trees and even built houses on it. Appeals come before the District Officers who are asked by the appellants at least to award compensation for disturbance, While some District Officers take the view that in equity, compensation must be awarded; others cite the customary law and refuse it.

Land acquired by pedge may be repledged to a third party. And so in pedge form of customary land tenure system outright sale of farming land is not recognised. But several cases of permanent alienation have happened. The holdings are of

considerable sizes whose owners are wealthy business men interested in building estates for themselves. Land held on pledge is regarded as personal property and the rights in it may be repledged, given, bequeathed or inherited. And so a man will ensure before his death, that his sons know which land he holds on pledge and also that out on pledge to others.

Mortgage

Cases of mortgage are not very much found in the rural areas of Eastern Nigeria. Mortage of house property is common in some big townships. In this form of customary land tenure, land is the security but its possession does not pass to the lender. In this type of agreement the borrowers retain their rights over the land but are supposed to set aside the proceeds of the sales of harvest for the lender as interest on the loan.

Exchange

In most parts of Eastern Nigeria it is usual for individuals to exchange plots of land to their mutual convenience. A man may decide to build a house on land part of which being his original property and he acquires another part adjoining it in exchange for a similar sized plot of his own further away.

Land Held On Lease

A lease is distinguished from a pledge in that it is not terminable at the sudden desire of the land lord and is usually for a fixed term which may or may not be renewable. The commonest form of leasehold in Eastern Nigeria is tenancy for one year which is sufficient for a man and his household to plant with all or a surplus of the seed available to him (Chubb 1961). However, there are more leases for indefinite period but with fixed annual rents. The short term lease for one harvest period only is widely found in lands continguous to over-farmed areas and barren lands on plateaus. Rents originally paid in kind were later cash payments. In practice land was leased from families rather than from individuals since, in these areas land is still largely in family control.

Another form of land held on lease is the Kola Tenancy. This form of tenancy is found in many areas in or near the belts of densest population. In its essence, kola tenancy is defined as the permanent right subject to good behaviour; to occupy land usually by a stranger on a single original payment (Chubb 1961). In early days this was marked only by the ceremonial giving of kola nut and a bottle of gin. Kola tenancy was granted for life time of the tennant and of his or her successors for as long as they occupied the land. On the death of a kola tenant the inheritor was expected

to give another kola to the land lord in acknowledgement of his superior title.

The kola tenancy was understood to be during good behaviour and in the early days the question of subletting which later became a problem was not considered since land was not then regarded as having commercial value. Kola tenancies were usually obtained from families though, individuals also accepted kola tenants. In 1918 and thereafter land values in Eastern Nigeria especially in Onitsha rose steadily and kola tenants who had secured their tenancies by token payments found themselves the occupiers of land increasing rapidly in value. Some of them began to sublet their holdings or buildings on them for substantial sums thus deviating from the essence of kola tenancy (Chubb 1961).

3.60 Statutory Shaping of Land Law and Land Administration In Eastern Nigeria

In order to appreciate fully the significance of the structural changes in tenurial arrangements introduced in the Land Use Act 1978 on the system which previously prevailed in Eastern Nigeria it will be helpful to make a survey of the major statutes that have affected the shaping of land law and land administration and the scope and effect of these.

3.6.1. On Public Ownership of Land

One of the earliest legislations introduced by the colonial administration of Eastern Nigeria was that dealing with acquisition of land for public purposes. The first was the public Lands Ordinance of 1876. This ordinance was reenacted with modification as Public Lands Acquisition Act 1917. Following the introduction of federal structure the Act became a regional (later state) law. The legislation empowered the government to acquire land compulsorily for public purposes subject to the payment of compensation to the expropriated owners. Land thus acquired became state land which was the property of the state. Compensation is also paid for crops, buildings and other structures on such land acquired. Cost of land is by law the prevailing market price per hectare of land (for agricultural land, residential land depending on the location) as it would have been twelve months prior to the date of publication of acquisition notice (Olawoye 1982).

The power to acquire land compulsorily in Eastern Nigeria is also given by the Town and Country Planning Law 1946 which allows the compulsory acquisition for schemes of development. The advantage of power of compulsory

acquisition is that it enables government to gain access to the land unhindered by conflicting claims to the land. The state land Act empowered the government to grant leases of state land to private individuals. The title of such lease of state land or other public housing bodies became free from the land disputes which characterise transfer of privately owned land in Eastern Nigeria. Before the Land Use Act 1978, government had acquired vast areas of land for public use virtually as land banks. In most cases it took advantage of bureacratic procedure and in many cases dispute over the compensation money to avoid payment of compensation for such acquisitions for many years.

3.6.2. On Planning Control

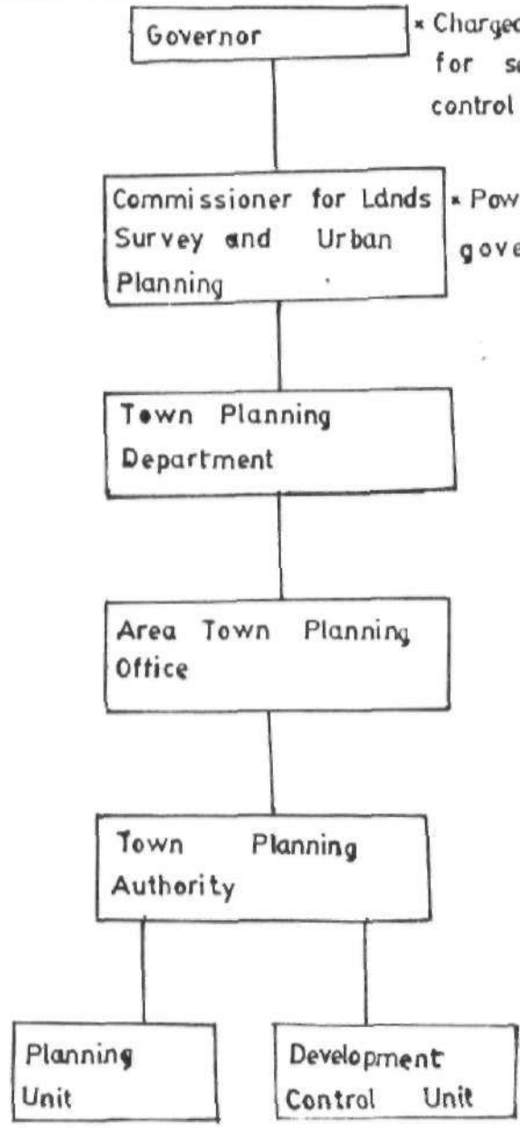
Restrictions on land use for town planning purposes was seriously attempted in Nigeria when the Lagos Town Planning Ordinance 1928 was passed. It established the Lagos Executive Development Board and charged it with the responsibility of developing Town Planning schemes with the general object of securing proper sanitary condition, amenity and convenience within the town area of Lagos.

It was not until 1946, that the first planning ordinance which embraced the whole

country : The Town and Country Planning Ordinance as passed. The ordinance was as a result of the changes that were taking place in the country : increasing population, growing commercial sense, development of land contrary to public interest and the need to plan the country for the benefit of the community (Ola 1984), The aim of the ordinance as contained in the ordinance itself was the replanning, improvement and development of different parts of Nigeria. Under it, the Governor General was the central Planning Authority. He was charged with the responsibility for securing controlled development through the preparation fo schemes all over the country. In each of the then regions (Northern, Eastern and western regions) the planning powers of the Governor General were executed on his behalf by the Minister responsible for planning matters.

Following the introduction of federal structure, the Act became a regional matter and later state law. There are slight differences between the states agencies responsible for making planning decisions. But invariably, they include the state Governor, the Commissioner responsible for planning, and the Town Planning Authority (see fig. 3.02). Control of development is still by the adoption of an approved

DECISION MAKING ORGAN ON PLANNING MATTERS, IMO STATE.



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Fig. 3.02

scheme over an area declared a planning area to which all development within the area must conform. The ordinance contains far reaching provisions affecting ownership of land and the rights of owner to use his property as he likes. It prohibits the carrying out of development without the consent of the planning authority. Discordant land uses attract sanctions, the most severe of which is demolition of contravaning development. The ordinance empowers the authority to make orders (in the law referred to as supplementary orders) or adopt, with or without modifications, supplementary orders proposed by owners of land as respect any area of a scheme. The authority may purchase any land in a planning area compulsorily or by agreement (section 33 (1).

3.6.3. On Control of Disposition

Under the Natives Land Acquisition Law an alien is prohibited from acquiring an interest in land from a native or from a fellow alien except under an instrument which has been previously approved by the Governor (Olawoye 1982). This policy dates back to 1900. The enactment of the first of such statutes - The

Native Land Acquisition Proclamation was the first Act of the legislature of the Protectorate of Southern Nigeria. The objective of the law was to prevent the exploitation of native land owners by aliens. It sought to achieve tnis by preventing an imprudent alienation or an unfair bargain. And so the main objective of the legislation has however, been the control of the activities of aliens within the protectorate. This method was not applicable to the colony (the present Lagos State). The Lagos state government by an edict in 1971 - The Acquisition of Land By Aliens Edict - introduced similar policy.

Whereas in Eastern Nigeria and other parts of southern Nigeria an alien could acquire a maximum of leasehold interest (ninety nine years), in the case of Lagos the maximum lease-hold an alien can acquire is twenty five years. According to Olawoye (1982) the Native Lanus Acquisition Law had little or no impact on land transactions in Eastern Nigeria and other parts of southern Nigeria before the Land Use Act 1978 came into force.

3.6.4. On Reform of Customary Law

The kola Tenancy Law 1935 tried to reform the customary law with regard to kola Tenancies

prevalent in Eastern Nigeria and particularly in Onitsha. The legislation created a machinery for the grant(conversion of lease-hold to freehold) of such tenancy rights at the request of customary landlords at a price to be fixed by a tribunal constituted under the law. This legislation was little used in practice. However, it was an approach to the problem of customary tenancies which constitutes one of the biggest stumbling blocks to the proper utilisation of land. The full dimension of the problem of customary tennacies will be well appreciated when one realises the many instances of customary communities with attendant ill feeling between the host community and the tenant community (Akinnola 1990).

3.70 Problems of Land Tenure In Eastern Nigeria

In Eastern Nigeria ownership of land in the accepted absolute sense is unknown. Land is held under community ownership and not as a rule by an individual as such. The impact of English ideas of property law upom indigenous conceptions, largely due to the effect of practising African lawyers trained in English law; the change from subsistence farming to cash crop farming and the increased pressure of population upon the land

consequent upon this change; has produced tendencies towards a partial breakup in the existing system and many individuals now own lands in their own right (Elias 1971).

Increase in commercial activities like cash crop farming of cocoa, palm oil, palm kernel and copra for export introduced new conception of rights in land and created many problems. First there is much uncertainty reflected in an irreconcilable contrary attitude towards the alienation of land. On the one hand, there is demand for freedom from all rules controlling allienation since these tend to impede the economic progress of the people; on the other hand, there is in many congested areas like Owerri an increasing opposition to all forms of commercialisation of land. The government confined its claim to rights of control over the alienation of land to aliens thereby giving free predominance to development of the existing system of private freehold rights.

Second, there is marked difference between the legal status of villages in Northern Nigeria and those in Eastern Nigeria. In Northern Nigeria a village's right of occupancy of any part thereof, might not be sold, mortgaged, leased, echanged, pledged, bequeathed or otherwise disposed of without the consent of the Governor. But in

Eastern Nigeria there is no such statutory control. Village communities have been left free to administer their lands as they pleased and to make their own rules of disposal. The usufructuary rights originally acquired by lineages or families have turned into absolute rights which can be freely bought or sold. Lands which were formerly common or public property have tended to become lineage. In this way many villages in Eastern Nigeria have ceased to own any lands of their own.

The danger of this is not merely that the community onwership of land by village is giving way to the private ownership of the lineage, but that this is giving way to somehow holding land by giving service to the owner and subtenancies, with a whole series of middlemen who have no interestin the improvement of the land or development of the land and absentee landlords who have no interest in their tenants. Under the conditions of subsistence agriculture tenants were sufficiently protected by the provisions of the customary law. Section 10(i) (a) of the Native Courts Ordinance 1933, provides that a native court shall administer the native law and custom prevailing in the area of jurisdiction of the court so far as it is not repugnant to natural justice or morality or inconsistent with the provision of any other ordinance. But today, in these areas where

land has become commercialised, the protection offered by customary law has often proved inadequate; both as regards security and as regards compensation for improvements effected during tenancy.

Third, with the prospects of industrialisation communual ownership of land was perpetuated as the norm in spite of the fact that the first government experts in development in Eastern Nigeria saw clear evidence of a gradual change from communual and family ownership to individual rights in land. By refusing to recognise and encourage the natural trends towards individual ownership and commercialisation of land in these areas government prevented the development of a free market of land and thus under-utilised resources.

Because of these problems there was an urgent need to introduce legislation to reform and unify the various laws relating to ownership and control of land. The especially sharp differences between Northern Nigeria, Eastern Nigeria and other parts of Southern Nigeria needed to be removed. This is important considering the social, economical andpolitical effects they have had on development in the country.

CHAPTER FOUR

THE LAND USE ACT 1978

4.10 Principles And Provisions of The Land Use Act 1978

The Land Use Act 1978 is intended to achieve a number of political, social and economic objectives. The second National Development Plan 1970 to 1974 and Third National Development Plan 1975 to 1980 state that the main goals of natinal development are to build a united, strong and self reliant nation; to create a great and dynamic economy; to establish a just, democratic and egalitarian society and to provide bright and full opportunities for Nigerian. The Land Use Act 1978 enacted during the Third National Development Plan was formulated as one of the means of achieving these ends (Siman 1983).

The Act is specifically meant to effect structural change in the systems of land tenure in the country. It is also meant to achieve fast economic and social transformation and to counteract economic inequality arising from the high cost of land values caused by land owners and speculators. It also seeks to make land easily and readily available for government and private programme development.

To this end, the then military government under Lieutenant General Olusegun Obasanjo set up a land use panel in 1977 to undertake a study of the

various land use systems in the country and make suitable recommendation on how best to remove the constraints. The then Supreme Military Council and the National Council of States considered the report and agreed that there is need for structural change in the country's land use system; such that will bring the desired goal of fast economic and social transformation.

Based on this need, the Federal Military Government issued the Land Use Act 1978 on 28th March 1978. The Act has its provisions which are not new to some parts of the country especially, Northern Nigeria. A summary of the main provisions of the Act include:

a. Effective Nationalisation of All Land

Accordingly, for land already developed or in productive use before the commencement of the Act and is in an urban:

"the land shall continue to be held by the persons in whom it was vested immediately on the commencement of the Act"

Where on commencement of the Act, the land which is vested in vacant or undeveloped and in excess of certain hectarage according to the proposed use;

"one plot or portion of land not exceeding half hectare in area shall continue to be held by the person whom theland was vested, as if the holder of the land was the holder

of statutory right of occupancy granted by the Military Governor..."

The Act continued with the fact that:

"all the rights formerly vested in the holder in respect of excess of the land shall on commncement of this Act be extinquished and the excess of the land shall be taken over by the Military Governor and administered as provided in the Act."

b. Designation of Urban Areas

Section 3 of the Act provides that:

"... the Military Governor may for the purposes of the Act by order published in the state gazette designate the parts of the area of the territory constituting land in an urban area."

c. Powers of The Military Governor In Relation To Land

These are:

To grant statutory rights of occupancy to any person for all purposes.

To grant easements, appurtenance to statutory right of occupancy.

To demand rental for any such land granted to any person; revise the said rental, impose a penal rent and revise penal rent.

To revoke right of occupancy

d. Exclusive Rights of Occupiers

Section 14 states that any occupier under section 8, shall have exclusive rights to the land, the subject of statutory right of occupancy against all persons other than the Military Governor.

e. Compensation For Improvements In Certain Cases

Section 35 states that compensation will be paid in respect of the improvement already undertaken by individuals in anticipation of eventual development of their holdings. The developed holding is also assessed on the basis of open market value and computed as specified in section 29 of the Act:

> "... the holder and occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements."

f. Transitional Provisions On Land

Transitional provisions on land are made both for land in the urban area and those not in the urban areas. Basically the principles behind these provisions are the same. However, section 34 of the law deals with provisions in the urban areas where as the non urban areas are covered by section 36. There is penalty for false claims in respect of land. This false claim which concerns any right in land is an offence liable on conviction to imprisonment for one year or to a fine of ₦5000.

g. Jurisduction of High Court And Other Lower Courts

The high courts and other lower courts have jurisdiction in respect of proceedings over land such as declaration of title, determination of persons entitled for compensation for improvements and other law related matters. The lower courts deal with rights of occupancy granted by local governments.

h. Powers To Make Regulations

Powers To make regulations have been given both the National Council of states and Governors, various procedures are obseved in different states in the federation as regards rents, fees, forms used and other matters which the Governor has powers under section 46 of the Act.

i. Modification of Existing Laws

Section 48 empowers each state to continue with its different existing registration laws subject to such modification (whether by way of addition, alteration or omission) as will bring those laws into conformity with the Act or its general intention. The system tends to vary greatly from state to state in the federation. However, it is subject to conformity with the Act.

Provision is made in the Land Use Act 1978, that all land comprised in the territory in each state (except land vested in the Federal government or its agencies) is vested in the Military Governor of the state who will hold such land in trust for the people. The Governor would have henceforth be responsible for allocation of land in all urban areas to individuals resident in the state or to organisations for residential, commercial, agricultural and other purposes while similar power with respect to non urban areas are conferred on local governments.

Provision is made in the Act for the establishment in each state of a Land Use and Allocation Committee (composed of at least two estate surveyors or land officers, a legal practitioner and some other members representing community interest) with advisory functions and power to determine disputes as to the amount of compensation payable for improvements upon revocation of certificate of occupancy. Each local government would also set up a Land Allocation Advisory Committee also with purely advisory role.

The other provisions in the Land Use Act 1978 related to designation of urban areas; statutory and customary rights of occupancy; issuing and revocation of certificate of occupancy and various matters.

4.20 The Logic Behind Federal Government Intervention

The Land Use Act 1978 is Federal government legislation aimed at streamlining the land tenure systems in Northern and Southern Nigeria into one. The logic behind Federal government intervention is seen in the concept of the Act. The general concept of the Land Use Act 1978 is connected to that of land nationalisation and it is examined here as a means to declared ends. It is also examined as an administrative technique for which both a definition and operative machinery must be found and as a practical solution to the problems which calls for natinalised land policy.

The then Military government under Lieutenant General Olusegun Obasanjo in view of the above and many other arguements put forward in favour of land nationalisation found it necessary to promulgate the Land Use Act 1978. The list of ends to be achieved on promulgation of the Act is not exhaustive but includes:

a. Easier Access To Land

The arguement on this score reflect the attitude found among land owners who used the power of property to gain political ends. This was common aspect of Southern Nigeria especially Western parts where the big land owning families are chiefs and they virtually control all aspects of the community where

they live (Siman 1983).

b. Better Distribution of Private Wealth

The surveys of land ownership in the 1970's by Federal and State governments show that a greater percentage of land in Southern Nigeria were owned by a few large families who, sometimes hold government projects at stake by refusing to release the required land (Second National Development Plan 1970 to 1974). This is used by the Federal government in the arguement for a land use Act as a means of more even distribution of land rights. However, extensive estates are still found today proportionately in terms of distribution of wealth. The rapid and substantial growth of industry over agriculture, vast acquisition of land by Federal and State government, public undertakings, quasi-government corporations and boards, the taxation of landed capital income, altered labour conditions and other circumstances relative to land in Nigeria have altered the pattern of private ownership of land.

c. Reduction of Privilege and Power

Unlike the pre - 1977 politics, the widening of the parliamentary privilege to make it possible for a man to sit as a member of parliament and to vote in parliamentary elections irrespective of property qualification however minimal, has reduced

the political power resident in land ownership.

d. Security of Tenure

The arguements for land nationalisation are also to give tenants security of tenure "fair rents" and compensations for improvements. Even before tenants of agricultural land and urban property alike had gained the benefit of later or expected reforms, advocates of land nationalisation were optimistic, showing what advantage a tenant under a state land lord would have over the tenant on a private estate.

e. Managerial Efficiency

The case for public ownership of land centred round the assertions that private owners cannot manage the land efficiently though with a few exceptions. They have neither the money nor the inclination to manage the land. The arguement is in connection with rural land and urban housing.

f. Control of Land Value

The control of land values especially, that value of urban lands as it affects house prices, is a pressing problem in the country. The assertion is that a progressive government will solve it by nationalising the land. But there are two problems here. First, is the control of land values below preconceived levels and second, is preventing increments in value from being reaped by private land owners or recuring value increments for the community.

Land values rise becuase of a sustained demand for homes and ability to pay higher rents and prices. If buildable lands are not nationalised government can in the alternative set up its agencies and reap the revenue which would have otherwise gone to the land owners as rent. Rent, if fixed, would not reduce the receipt of an increased increment by private land owners. But if rents were geared to profit in such a way as to provide that the yield on tenants investments remained constant, all increases in profit would authomatically mean a corressponding increase in rent.

g. Compensation And Betterment

By nationalising land there is the problem of compensation of betterment. Also by nationalising land, a nation of lease-holders is imagined. If the rents were fixed for the terms of the leases and the leases were alienable, the lessees would have marketable interest not different from the present leaseholds. It would make no difference to lessee's claim for compensation for interference with his quiet enjoyment that the government is the reversioner.

Issues like road construction, slum clearance, housing and other improvements bring a lease to an end, damage market values of some improvements and benefit others. Therefore compensation and betterment

would pose problem with a wholly leasehold society as it is with mixed leaseholds and freeholds. To compensate a lease by payment of nominal damages will seriously undermine the confidence in government and retard if not stop the investment of private capital in development. But if a lessee whose lease is not on the market is to be prevented from reaping a profit over and above a statutory yield on capital investment in building and other developments, his rent would have to be adjusted because of betterment.

h. Town Planning And Land Development Control

It is expected that by land nationalisation town planning and urban renewal will be facilitated. The state as universal reversioner would have possession of all urban land as its lease expires and the town planning authorities would be in a position to achieve their aim of replanning, improvement and development of different parts of the country as contained in the ordinance (Town and Country Planning Ordinance), according to the requirements of professional town planners. The cumbersome procedure of compulsory acquisition will be avoided.

The objectives of the Act described above sound plausible but the truth lies in the practicability. Until the leases expire changes in a town plan will raise problem of sanctions and acquisition of leases. And the full benefit of the planning facilities will

depend upon the timing of the programme of the lease terminations. Leases which over an extensive area expire in five yearly intervals over a total period of fifty years will require the creation of a wide variety of leases of from forty five to five years, if the possession of the area is to be gained and land is not left vacant.

Longer leases will raise the questions of redevelopment in the interval between the termination of the expiring lease and the end of the new one. And shorter leases will raise the question of compensation for buildings built and paid for by the tenant which the landlord intends should continue in use after the end of the tenancy. Compensation for tenants buildings is another general complication which does not favour easy planning through land nationalisation (Siman 1983).

4.30 Effects of The Land Use Act 1978

The effectiveness of the Land Use Act 1978 in terms of its declared objectives can be assessed by forming opinion on its prospects based on the performance of previous land laws and the inherent weaknesses in the performance of the Land Use Act 1978. The major lesson over land policy control in Nigeria is that any land policy be it partial government control or full state ownership is as good as the machinery for implementing it and the disposition

of the government to accept the authority of its own laws.

There are examples of sound administrative policies which were rendered unreasonable by the conservatism of the administrative bureaucracy, the lack of funds and competent staff to implement the policies and the lack of cooperation from the local people. One of these is contained in a report from Bendel State government. In 1980, over two years after the promulgation of the Land Use Act 1978, the Bendel state government submitted a report to the Chief Land Officers' meeting (Siman 1983). Part of the report which pertains to the Act is quoted below.

"Following the inception of the civilian administration in the country in 1979, Land committees were dissolved. This not withstanding the processing of applications particularly in respect of land vested in individuals or organisations continued to be processed in the Ministry, in preparation for the committee's action when appointed. The committees have now been reconstituted and normal processing of applications has now started. The Governor has also delegated the power to approve applications for consent to mortgage properties to the Commissioner for Lands and Surveys. The

Governor however retains the power to make grants or allocations of land, approve the granting of and signing of certificate of occupancy in respect of lands vested in persons or organisations before the Land Use Decree. The state has also joined some other states in advertising applications for a grant of right of occupancy. A period of thirty days is normally given for objections if any to be submitted to the Ministry to the grant of the applications."

The above report is quoted to bring out the fact that there is administrative bureaucracy in the implementation of the Land Use Act 1978.

4.40 Problem of Interpretation of Sections of The Land Use Act 1978

Some of the problems that are identified in the implementation of the Land Use Act 1978 have in the main got to do with the interpretation of sections of the Act. There are however, other constraints such as financial, manpower and making the people especially, those from the southern parts of the country fully accept this new land policy which affects one of their sources of wealth - sale of land.

The Land Use Act 1978 has the revolutionary effect of land reform in the whole country. This means that there is over-riding consideration

whereby all land is to be protected for public interest; that is, to protect, assure and preserve the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity for themselves and their families.

The first proposition can then be made that the whole area of Nigeria belong to all Nigerians. Since the Land Use Act 1978 is by specific adoption part and parcel of the Nigerian Constitution section 274(5) "All Nigerian" would mean Nigerian citizens as defined under chapter III of the constitution. The Land Use Act 1978 is clear in its provision of the land being held in trust by the Governor, not for the people of Nigeria living in that territory, but for all Nigerians. It would then imply that land in Imo state territory belongs to all Nigerians and is held in trust for them by the Governor of Imo state, one would relate the ratio of population of Imo state origin to the area of land available. But does it imply that indigenes from other states of the Federation living in their states of origin have as much right to land as an Imo Igbo? If it does, the Land Use Act 1978 was enacted to achieve some political ends such as free movement and interaction of the people of Nigeria. This may be assumed to boost chapter II,

section 15(1) of the constitution of the Federal Republic of Nigeria which states that the motto of the Federal Republic of Nigeria shall be unity and faith; peace and progress and section 15(2) adds that, to that end national inte-gration shall actively be encouraged while discrimination on the ground of place of birth, sex, religion, status, ethnicity and language spoken prohibited. For the purpose of promoting national inte-gration the state will under section 15(3) secure full residence rights for every citizen in all parts of the federation.

For convenience and proper administration of the land, the Land Use Act 1978 provides for each state to designate some areas as urban while others remain rural or non urban. All land designated as urban in the state is administered by the Governor or his representative. It is in turn assumed that the Governor is representing the Federal government. However it is observed that each Governor in his own particular state naturally gives priority to the indigenes of that state before considering others from outside the state. This is the case because of the functions of Land Use and Allocation Committee in state government administered urban area and Land Allocation Advisory Committee in local government administered non urban or rural areas (Siman 1983).

Therefore the political objective sought by the Land Use Act 1978 is partially defeated.

4.50 General Problems of The Land Use Act 1978

The Land Use Act 1978, despite its apparent potentials raises some questions and faces some problems. The first problem is political. The Act is conceived as an instrument for national inte-gration and land is vested on state governments. But it is certain that most if not all state governments were created at the height of ethnic bitterness in the country and so the control of land by state governments may undermine the unifying ideals which the Act sought to promote. What have been known as "abandoned property" some of which are yet to be restored to their original owners, consist largely of property on government land both in the Northern and Southern parts of Nigeria (Siman 1983).

The civilians take over of power from the military in the second republic (1979-1983) characterised revival of the precivil war period and gives little hope about the Land Use Act 1978. Some of the political parties seeking popular support to rule Nigeria during the second republic promised the electorate, that if elected to power, they would review or abolish the Act; which they believe violates individual rights entrenched in the national constitution (Nnamani (1989). Thus,

any assessment of political significance of the Land Use Act 1978, must recognise the limitations of implementing the legislation as an instrument of nation building.

The second problem is the question of reconciling the ideals of social welfare with the demands of fast economic transformation which is not always easy. The Land Use Act 1978 seeks to control inflation in land prices; to secure for public benefit the communually created increases in land value and to ensure that land is distributed equitably and expeditously for purposes of development. Although these are legitimate concerns but inflation is not confined to land prices. High land prices may reflect true demand and supply situation in the land market which in itself constitutes a necessary pressure for optimal utilisation of land. The vesting of land in the government may create illusion of land abundance and encourage reckless use of land especially since government is more unproductive in the use of land than the private developers have been (Siman 1983).

However government could by the powers conferred on it by the existing land laws (the Land Use Act 1978 being the latest) as well as other powers like property taxation stabilise land prices; compel the development of idle lands and secure part of the increase in land values. It could therefore,

be argued that what is needed is efficient way of implementing existing land control measures preferably the Land Use Act 1978 since it is a uniform land policy for the country.

The third problem is financial resources to implement the Land Use Act 1978. Since the inception of the Act, the preparation and ownership of private layouts have become illegal consequent upon the vesting of all land in the state in the Governor. Government alone cannot prepare and implement layout plans successfully in a capitalist economic system where the private sector is responsible for over ninety five percent of the developments taking place in urban area (Obateru 1982). Private land developers therefore, can successfully finance the preparation and implementation of local plans; coordinate urban land uses and within the framework of the plans provide socio-physical infrastructures. Lack of financial resources on the part of government has hindered the preparation and implementation of layout plans giving rise or worsening the proliferation of scattered developments in the outer fringes of towns and cities. Government should seek a means of solving the proolem of lack of financial resources to implement the Land Use Act 1978 in in this regard.

CHAPTER FIVE

CREATION OF OWERRI CAPITAL TERRITORY

5.10 Old Owerri Town

5.11 Location And setting

Old Owerri Town lies approximately on point of intersection of longitude 7°East and latitude 5° 33' North at the confluence of Nworie and Otamiri Rivers (fig. 5.02). It is made up of five villages of Amawom, Umuororonjo, Umuonyeche, Umuodu and Umuonyima (Acholonu 1979).

5.12 Historical Background

Owerri Old Town was originally an agricultural settlement and a provincial centre. The existing central market is the approximate location of the original traditional market which formed the common link between the individual villages.

Colonial administration reached Owerri in 1902 and by 1918 it had by reason of its nodality become the head quarters of the Eastern Protectorate including then Port Harcourt, Opobo, Bende, Okigwe and Agwu divisions (Agwu 1988). Later on, Port Harcourt and Umuahia provinces were carved out and the two towns took over many of Owerri's administrative duties. Owerri's influence then reduced to that of divisional headquarter. With oil exploration in 1940's Owerri saw a hope of revival. In 1953, Shell

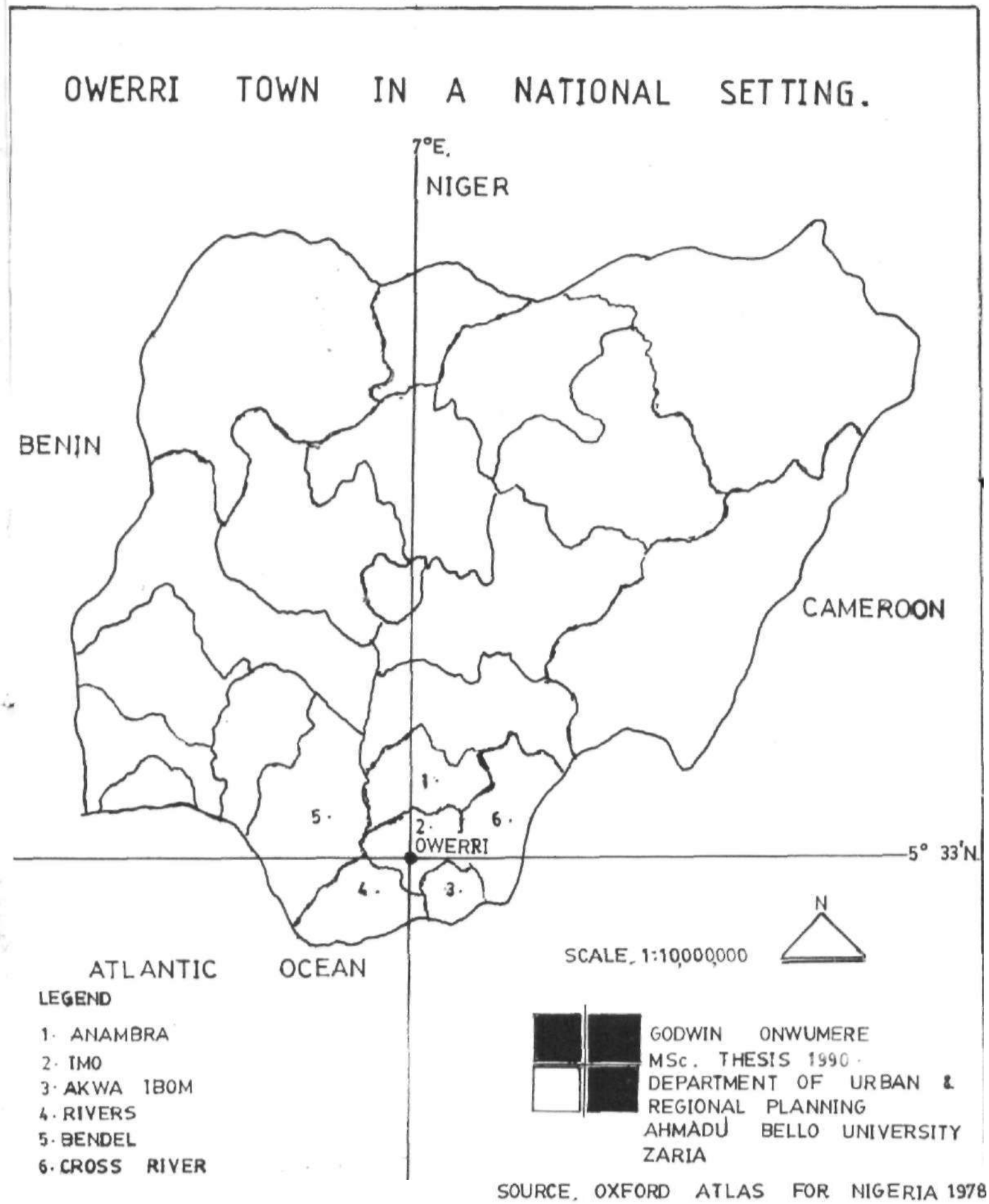
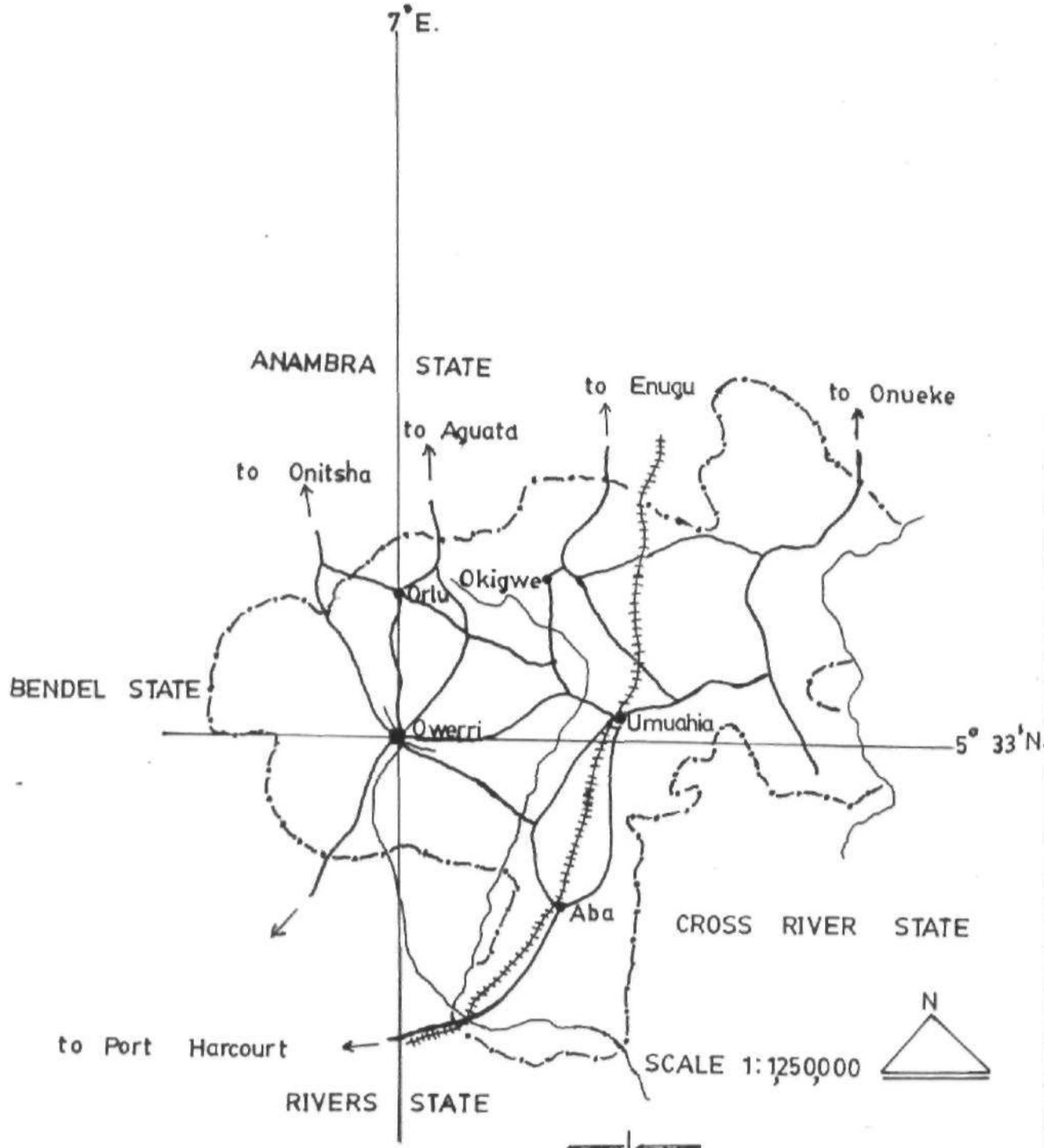

OWERRI TOWN IN A NATIONAL SETTING.
7°E.
NIGER
BENIN
CAMEROON
1.
2.
5.
6.
OWERRI
5° 33'N.
4.
3.
N
SCALE, 1:10,000,000
ATLANTIC OCEAN
LEGEND
1. ANAMBRA
2. IMO
3. AKWA IBOM
4. RIVERS
5. BENDEL
6. CROSS RIVER
GODWIN ONWUMERE
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ZARIA
SOURCE, OXFORD ATLAS FOR NIGERIA 1978

Fig. 5.01

OWERRI TOWN IN A REGIONAL SETTING.



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AHMADU BELLO UNIVERSITY
ZARIA.

SOURCE. IMO STATE CAPITAL OWERRI MASTER PLAN PHASE II REPORT FEBRUARY 1977.

Fig. 5-02

D' Arcy Exploration Company began to build its headquarters at Owerri. It was known as "Shell camp". This period brought some economic growth resulting in a sharp increase in housing along with market reconstruction and development of a new motor park. From this period Owerri began showing a centrality of access from the major urban centres in the then Eastern Nigeria. The closest distance from Owerri to these urban centres are as shown in fig. 5.02.

Owerri to Port Harcourt	114 kilometres
Owerri to Onitsha	101 kilometres
Owerri to Orlu	39 kilometres
Owerri to Okigwe	61 kilometres
Owerri to Umuahia	63 kilometres
Owerri to Aba	65 kilometres

The early plan of the town was prepared in 1948 by Tetlow, A British town planning adviser to West Africa. His plan influenced the alignment of the existing roads and the development of the township housing areas surrounding the villages. In 1963 Shell company moved its headquarters (administrative and industrial) to Port Harcourt. The move, prompted by proximity of the riverine township to the existing oil fields and to both harbour and airport facilities, established Port Harcourt as the petroleum centre of Nigeria. It had adverse effect on Owerri's economic and social life. With the location of Advanced Teachers' Training College (now Alvan Ikoku College of Education) and a shoe factory, growth picked

up again in the town.

As one of the means of sustaining the growth, Ikenegbu Layout was prepared in 1963. The Government residential area was planned in 1965 and subsequently revised in 1970. By 1973 plans for Ikenegbu layout extension and Bethany layout (now part of Works layout) had been prepared. In spite of all these efforts growth in Owerri remained relatively slow. On February 3rd, 1976, Imo state was created along with six other states and Owerri became the capital.

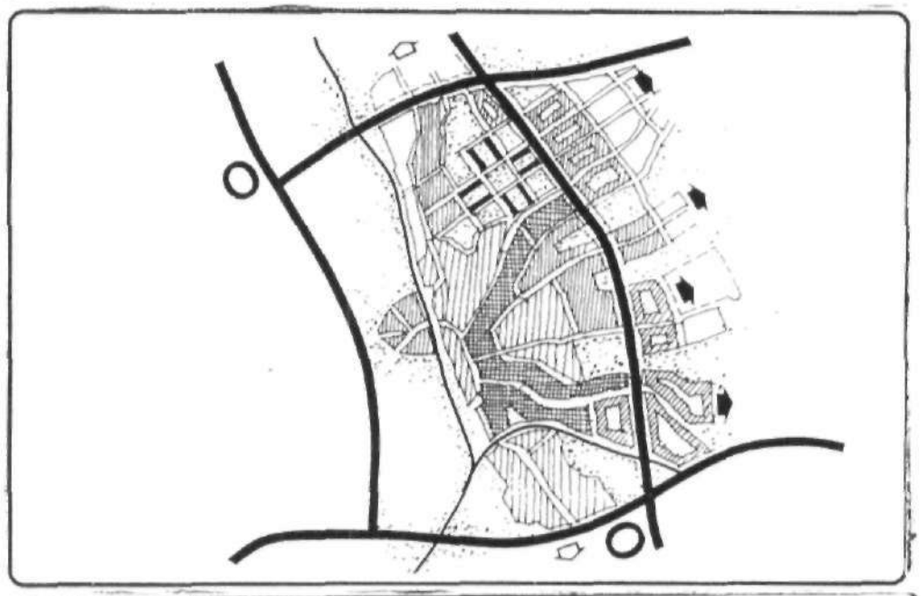
5.20 Owerri Capital City

5.21. Area And Development Strategy

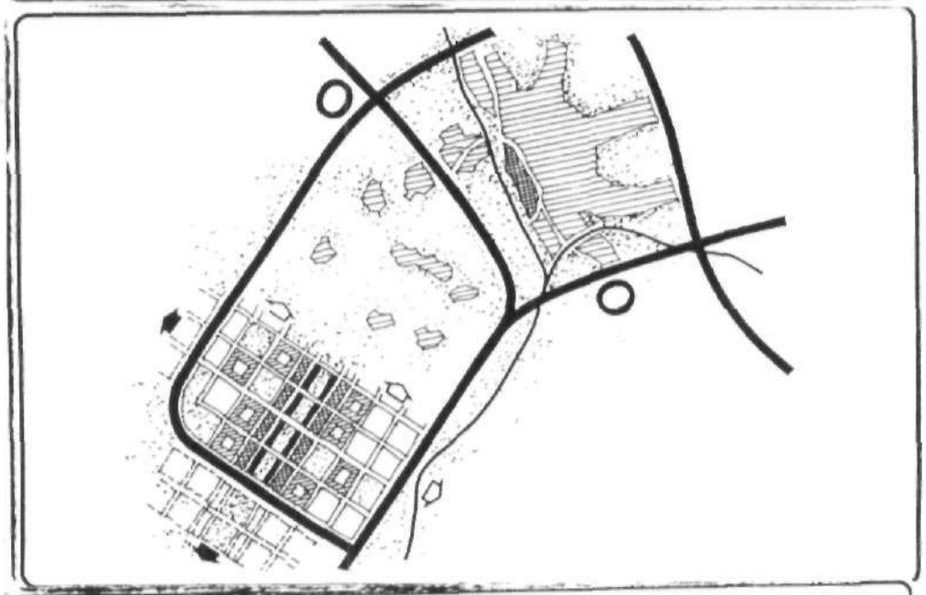
An area of 72.5 square kilomeyres was acquired by Imo state government for purpose of developing Owerri Capital City. A frame work of urban structural components was set up and out of a number of possible combinations of the components three basic alternatives were developed namely : one city, two cities and twin city (see fig. 5.03). The advantages and disadvantages of the three alternatives were considered and after a first evaluation, the decision was made in favour of the "twin city" alternative.

New development in this chosen alternative was to take place on the southern side of Nworie River, making use of the river valley as a separating green belt between the new and existing

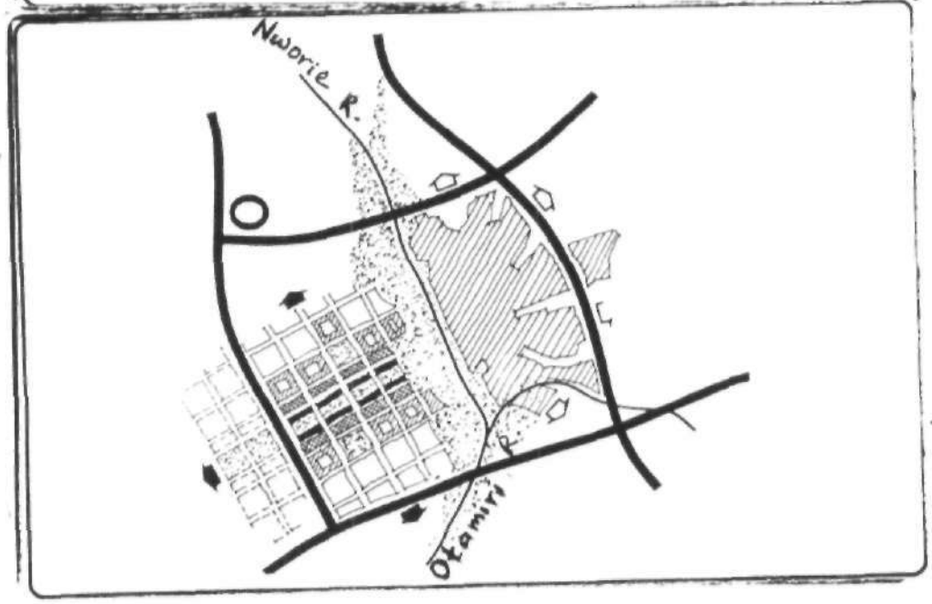
Fig. 5.03 ALTERNATIVE DESIGN CONCEPTS.



ONE CITY ALTERNATIVE



TWO CITIES ALTERNATIVE



TWAIN CITY ALTERNATIVE

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ZARIA.

SOURCE. IMO STATE CAPITAL OWERRI MASTER PLAN

town. A central spine formed by the governmental areas accompanied on both sides by residential area was to be located on this side (southern side of Nworie River) along a major axis in the south westerly direction (see fig. 5.03). The eastern end points towards the existing town centre while future growth was to occur in the opposite direction. One commercial centre was proposed for the capital city. In order to strengthen its future development, as many facilities as possible were to be concentrated in it. With hotels, banks, shopping and other facilities the commercial area was to flank the government areaon its southern side. In addition to the new commercial centre the existing commercial centre was to remain in the old town area. The development of new housing area was to take place in the existing as well as in the new town. In the new part of Owerri the residential area was to expand in a perpendicular way on both sides of the central spine (government area). As the city grew new sectors could be added (fig 5.03). The residential areas were divided by main roads network into units of up to 9,000 inhabitants and such units framed by main-raods was called an environmental area.

In the city structure plan two industrial areas were provided; one in the north west of

Owerri for immediate development and another in the southeast of Owerri reserved for long term expansion. Both industrial areas had direct access to the loop of external trangents. Also the direction of the prevailing winds were considered in the siting of the industrial areas. In addition non polluting and quite industries were dispersed evenly throughout the existing and the new town. Major public open spaces shaped as linear parks run along the Nowrie and Otamiri Rivers bordering on the existing as well as the new part of Owerri Capital City. Where the government area met the linear park following Nworie River a landscape central park was located. In addition a buffer zone of approximately 200 metres width was to be provided along the external tangents in order to give adequate protection against traffic noise.

Apart from the official government buildings there was a number of other public buildings such as cultural, educational, recreational, sports and health centres of urban and/or regional standard. These institutions were to be located along the linear park. On movement and access a loop of external free ways would be super imposed on the twin city linking the main raods in Owerri with regional and national high ways north, south, east and west of the city. The main roads were spaced at about 7oo metres intervals and their function is to carry traffic smoothly and easily. Access from local roads to the main raods was restricted to a limited number of points spaced at intervals of approximately

200 to 250 metres. Within environmental areas (areas bounded by main roads) all raods were to be local roads. A safe and convenient movement of pedestrians throughout the city was an important goal of the structure plan. Within an environmental area pedestrians could move safely and freely along paths that led to controlled pedestrian crossings at the mid points as well as at the intersections of the main road.

The city structure plan was not intended to be a definite plan or scheme for exact determination of all development over the twenty years plan period of Owerri capital city; but rather to serve as a framework within which more detailed plan would be formulated as they were needed. Consequently detailed layout plans had been prepared for nine action areas representing the initial phase of the new Capital City development. The following list (which is also illustrated in fig 5.06) shows the action areas and the land use programme of each of the action area:

a. Capital complex comprising of high court, house of legislature, state house, commissioners quarters and cabinet office.

b. Secretariat complex consisting of head quarters of ministries, headquarters of federal and state corporations, police head quarters and auxiliary buildings

c. Civic centre containing the conference centre

and meeting hall, cultural centre broadcasting station, entertainment facilities and stadium

d. Open space which include park, recreational facilities and artificial lake

e. Commercial centre made up of banks, hotels, shopping centres and offices.

f. Housing areas in the categories of residential areas of low, medium and high density with shopping facilities, open spaces, school facilities and facilities for public services

g. Industrial areas having in them federal industries, state industries and private industries.

5.22 Population

According to official census, the population of Owerri urban was 9,300 in 1953 and rose to 26,000 in 1963. These indicate growth rate of 10.8 percent per annum during the 1953 to 1963 decade. For the time when Nigeria fought civil war the growth rate was assumed to be at a considerably lower level; 2.5 percent. For the first five years after the creating of Imo State and Owerri as the capital the growth rate was assumed to be at the considerably higher level of 15 percent. These are shown in Table 5.01.

Table 5.01

Population Growth And Growth Rate

For Owerri Urban 1953 - 1996

Period	Population	Compound Growth Rate (%)	Remarks
1953	9,300		
1954 - ,1963		10.8	
1963	26,000		
1964 - 1966		10.0	
1966	35,000		
1967 - 1969		2.5	civil war
1969	38,000		
1970 - 1976		10.0	
1976	75,000		
1977 - 1981		15.0	Owerri as state capital
1981	132,000		
1982 - 1986		8.0	
1986	183,500		
1987 - 1991		5.0	
1991	231,000		
1992 - 1996	268,000		

Source: Imo state Capital Owerri Master Plan Phase II pages 60 and 62. 1977

5.23 Land Use Analysis

The land use of Owerri is analysed in Table 5.02. The amount allocated to the various uses in the urban structure plan represents forecast of the likely requirements for land in both parts of the city to serve a population of 270,000 (approximate population for the year 1996) and taken with the researved sites broadly corresponds to the extent of the designated area (7250 hectares).

Table 5.02 Land Use Analysis

Land Use	Total land requirement (hectares)	Percentage of total town area
Residential	2200	34.5
Industry	280	4.5
Commerce	150	2.5
Government	150	2.5
Other Public Institutions	320	5.0
Public Buildings	1400	22.0
Public Open Spaces	600	9.0
Green Belts	350	5.5
Transportation	650	10.0
Farm land	300	4.5
Total	6400	100.0

Source: Imo state capital Owerri, Master Plan Phase II page 73. 1977.

The target population for Owerri by 1996 is approximately 270,000 and the total town area covers 6400 hectares. This includes all the land area encompassed by the four external targents and two layouts (State Emergency Housing Scheme II and Federal Low Cost Housing Scheme) outside the eastern targent. Therefore, an over all density of 24 hectares per 1000 persons or 42 persons per hectare was proposed. Residential land use is generally a major occupier of urban land to ensure adequate accommodation for the urban population (Nze 1986). This occupied 34.5 percent of the over all land use analysis In calculating the proposed land use analysis assessment of probable residential densities in the city capital was considered. The average gross residential density proposed was 120 persons per hectare. The over all public land use was 29.5 percent. The apparent high percentage reflected the role of Owerri as a state capital and administrative centre. Other land uses - industry, commerce, public open spaces and transportation were calculated and provided for. On the basis of the need of the population and in terms of locations of the various land uses and their linkages, adequate evaluation was made and utilised (Nze 1986).

5.24 Housing

The chosen twin city alternative provides for the simultaneous growth of old Owerri to the east and new Owerri to the west (fig. 5.03). Old Owerri

retains the existing central business district (CBD) with satellite business areas in the new neighbourhoods, the new market and motor park. Five characteristic types of residential areas can be distinguished. They are: traditional villages in the urban core, Hausa quarters, township housing, government area and Amakohia. The five traditional village, see section 5.11, are nowadays surrounded by a mixture of township housing and commercial uses. The Hausa quarters are divided into two sections: original Hausa settlement and Hausa Township housing. In addition to the five traditional villages the original urban core contain the township housing which include Christ Church Road district, Royce Road district, Osuji street district, Wetheral Road (south) district and Uzii Layout. The Government Area located north of the original urban core include Government Residential district, Shell Residential district and Government Quarters. Amakohia which includes the village and military housing make up the northern edge of Owerri Urban (see fig. 5.04).

Old Owerri so far had 15 residential layouts in 1986, Some of them were under development and some others were still in design (Nze 1986) These layouts included those for government development and those for private developers. New Owerri

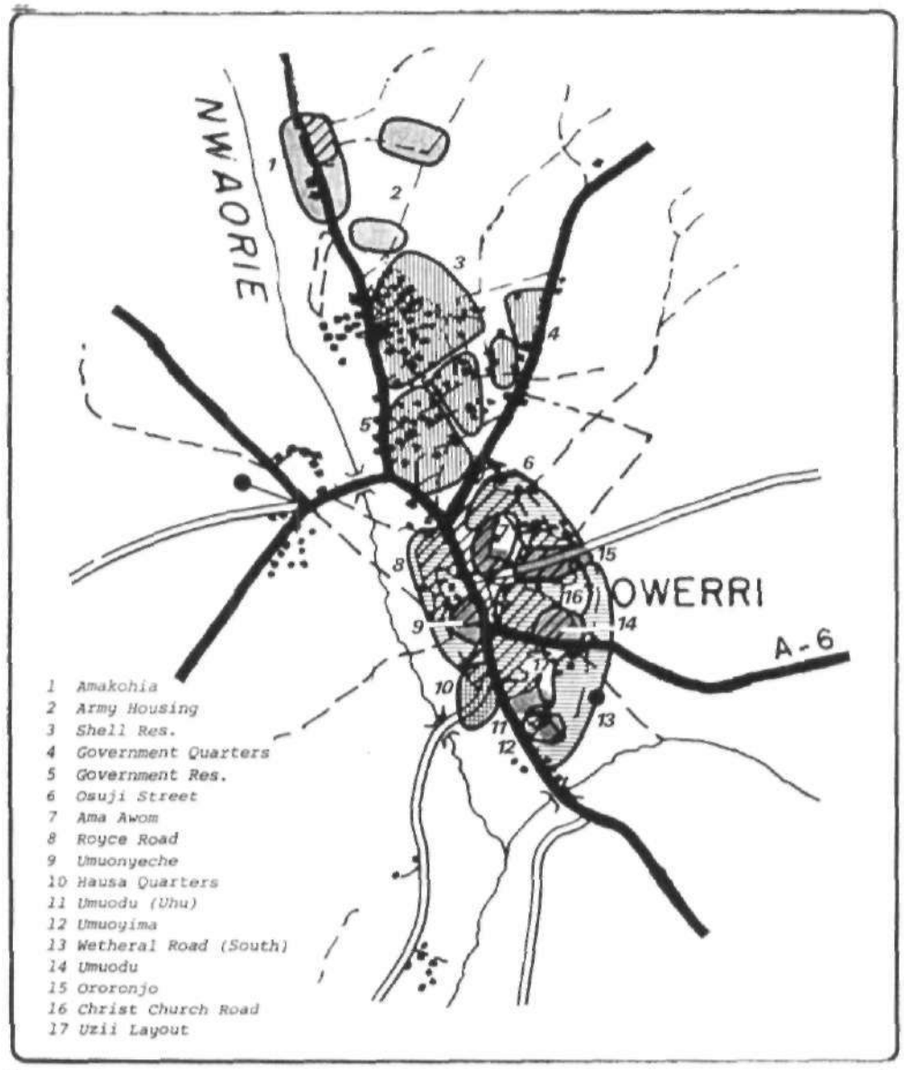


Fig 5-04

EXISTING RESIDENTIAL AREAS IN OWERRI.

N

SOURCE. IMO STATE CAPITAL OWERRI MASTER PLAN REPORT PHASE II FEBRUARY 1977

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had provision for a new and bigger central business district (CBD), with a commercial district and shopping mall, central market, motor park and a civic centre complex. Provision was made for about 32 residential layouts (Nze 1986).

5.25 Land Requirement For Housing

The total land requirement for housing in Owerri as proposed by the master plan (see Table 5.02) is 2200 hectares. This figure is supposed to cater for a projected population of 270,000 inhabitants by 1996 at a gross residential density of 123 persons per hectare. Table 5.03 shows the land area covered by existing residential areas in Owerri.

Table 5.03 Existing Residential Areas In Owerri

Residential Areas	Area (Hectares)
1. Traditional Villages (Old Owerri)	40
2. Hausa Quarters	15
3. Township Housing	110
4. Government Residential Area	100
5. Amakohia	40
Total coverage	305 hectares

Source: Imo State Capital Owerri, Master Plan Report Phase II page 79. 1977

By 1978 there were ten layouts whose schemes have been approved within the Owerri Capital City as shown on table 5.04 and fig. 5.05

Table 5.04 Regularised Layouts In Owerri 1978

Layouts	Area (Hectares)
Federal Low Cost Housing Scheme	109
State Emergency Housing Phase I	50
State Emergency Housing Phase II	79
Ikenegbu Layout	103
Ikenegbu Layout Extension	112
Okigwe Road Layout	21
Onitsha Road Layout	37
Government Station Layout	104
Works Layout	104
Ugwu Orji Layout	198
Total	882 hectares

Source: Imo State Capital Owerri, Master Plan Report Phase II page 82. 1977

By 1986, five new layouts were added to the ten regularised layouts. They include Amakohia/Akwakuma, Emmanuel College, Umuonyima, Orlu Road Pocket and Aladinma Northern Extension Layouts. Development of these layouts are at various stages of completion. Therefore, the total land area covered by residential areas (existing residential area and regularised layouts) is

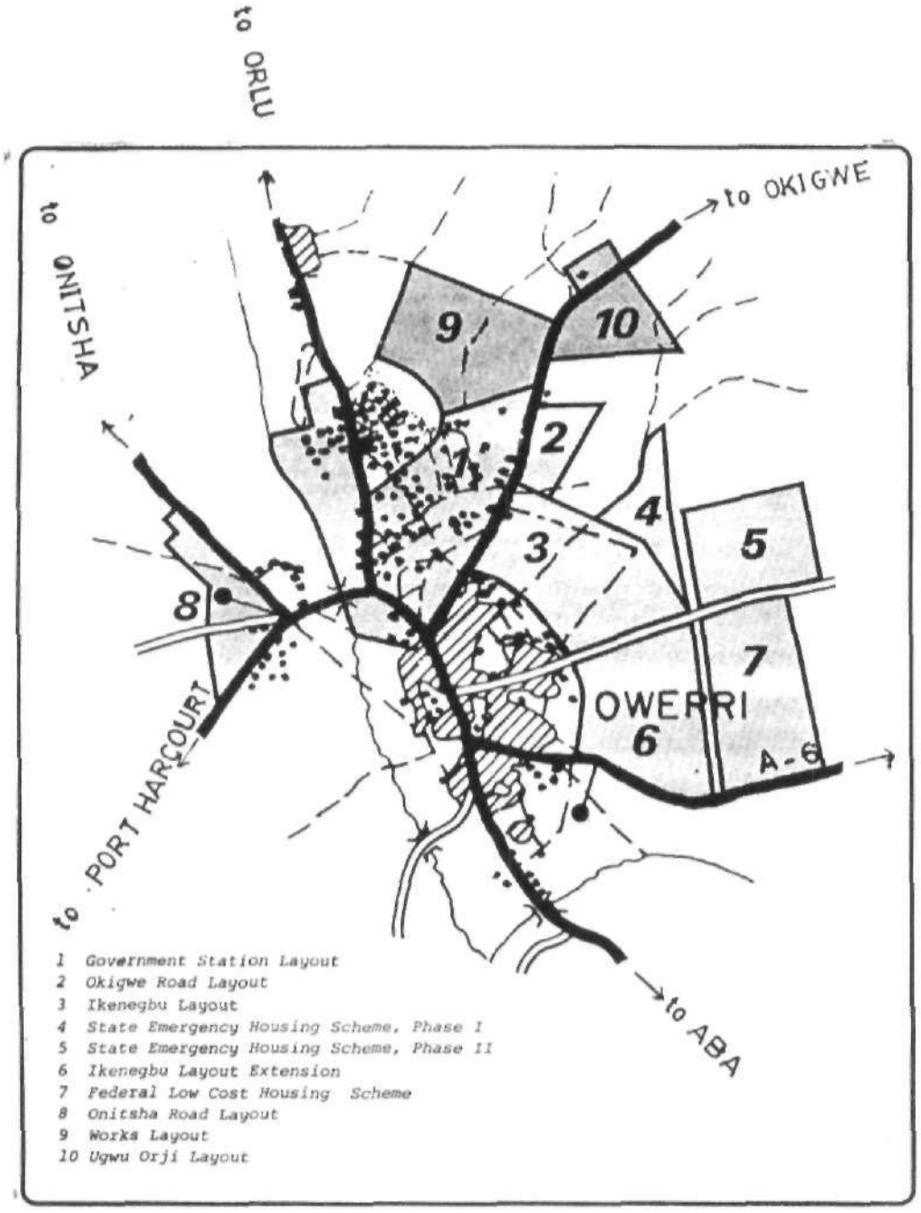


Fig. 5.05

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LAYOUTS IN OWERRI.

SOURCE. IMO STATE CAPITAL OWERRI MASTER PLAN REPORT PHASE II FEBRUARY 1977

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the sum total of Tables 5.03 and 5.04) which is 1187 hectares or 53.95 percent of the total land earmarked for residential development in the Capital City. The remaining 1013 hectares (46.05 percent) is yet to be committed to layouts for private or government development. The five new layouts in the Old Owerri part of the capital city, the new housing areas of New Owerri part of the Capital City of which have been allocated to people by the state, the sites for the World Bank Project and Federal government site-and-service scheme in Owerri constitute part of the undeveloped land for housing.

5.30 Owerri Capital Territory

5.31 Area and background Information

To cater for Owerri Old Town and its new status as the capital of Imo state an area of 2514.28 square kilometres was designated a planning area known as Owerri Capital Territory (field survey 1986). It consisted largely of Owerri Local government area and parts of Ngor Okpo la, Mbaitoli and Ikeduru local government areas. (see fig. 5.07).

It was during the Second National Development Plan period 1970 to 1974, that both Federal and state governments developed an awareness of planning problems and future needs of twenty leading urban centres in the country which included Lagos and all the states capitals. Following this awareness

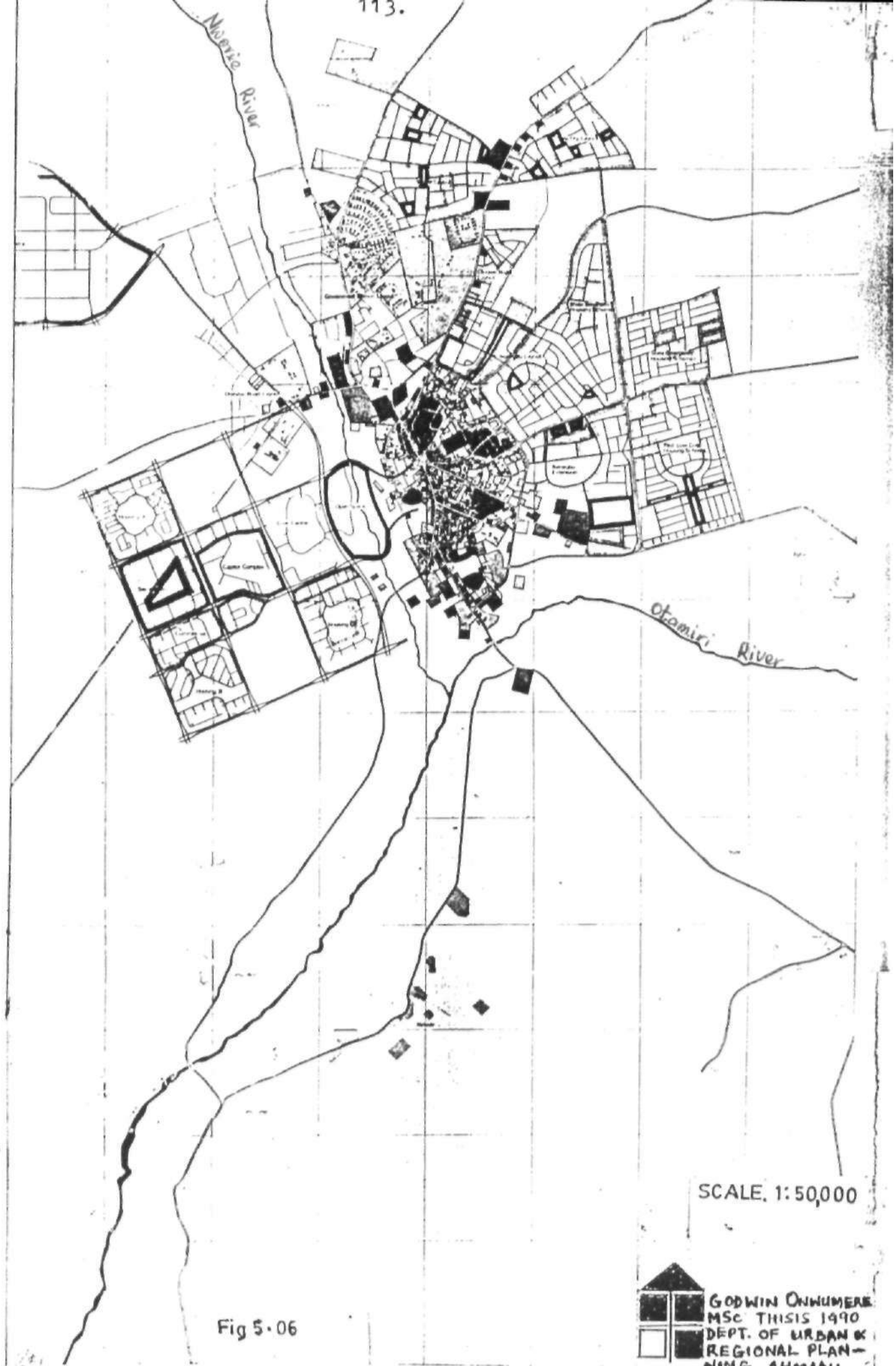
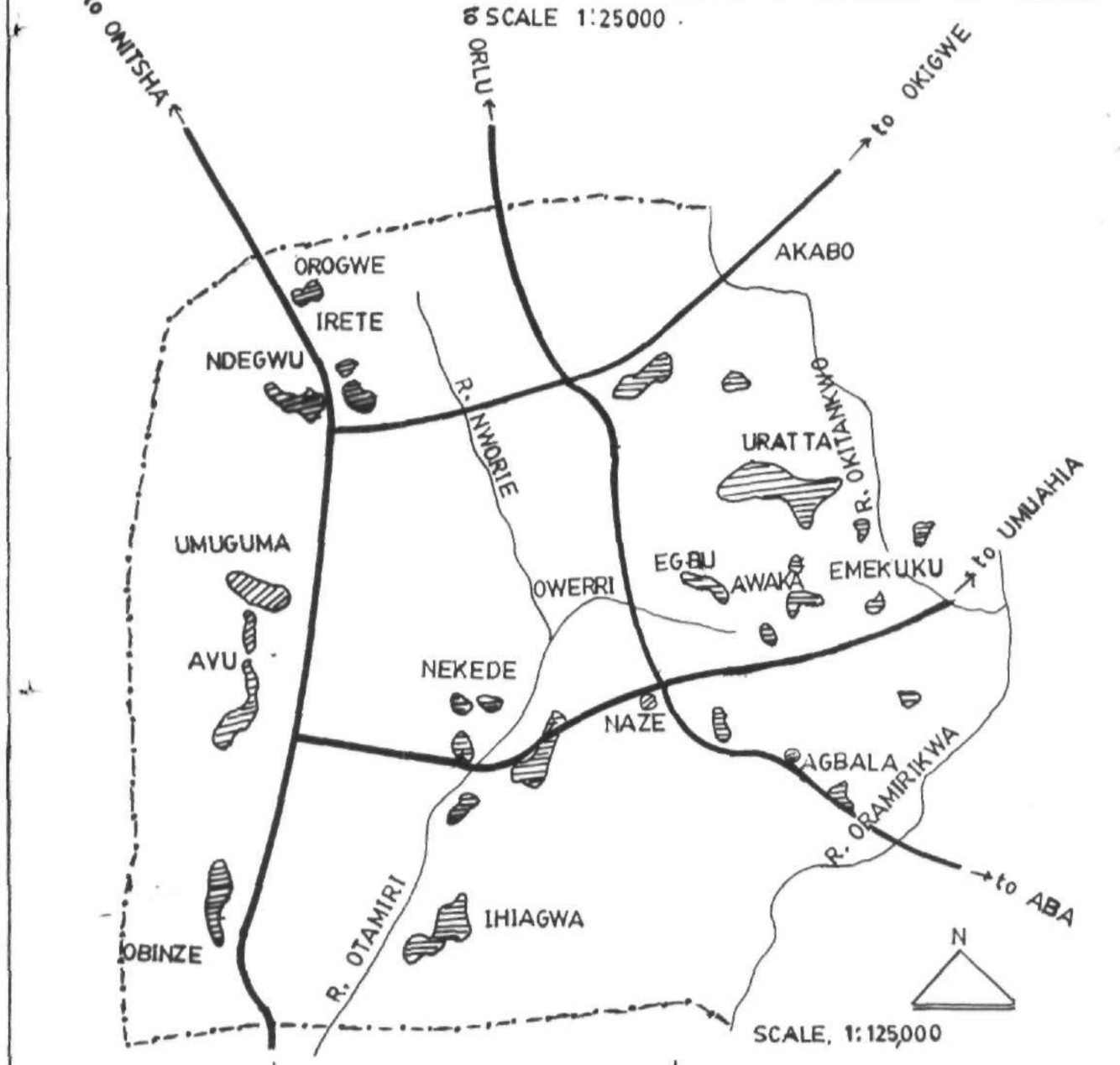


Fig 5·06

OWERRI CAPITAL TERRITORY

BOUNDARIES OF OWERRI CAPITAL TERRITORY.

REDUCED FROM MAP OF OWERRI URBAN REGIONAL DRAWING NO. OW/32 @ SCALE 1:25000 .



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ZARIA

SOURCE. IMO STATE OF NIGERIA EDICT NO. 18 OF 1978 OWERRI CAPITAL DEVELOPMENT AUTHORITY (AMENDMENT) AUGUST 1978.

Fig. 5.07

the state governments one after the other embarked on preparation of master plans for their major towns and cities in an endeavour to provide the frame work for the systematic and long term development of these centres.

Under policies and objectives of the Third National Development Plant 1975 to 1980, it was the objective of policy during the plan period to itensify physical planning effort in the country especially as regards the major urban centres which had become the main centres of population concentions and modern industry, commerce and public administration.

Imo state government assumed much more responsibility of Owerri Capital Territory and its jurisdiction. In the review of the master plan for Owerri, Galantay (1978) stressed the need to create a capital development authority. And so in 1978, shortly after the completion of the Owerri master plan, the Owerri Capital Development Authority was appointed to take up the task and challenge of the implementation (Nze 1986).

5.40 Implications of Designation of Owerri As State Capital and The Creation of Owerri Capital Territory For Accessibility To Land

Land is a diminishing resource hence its apparent scarcity in Owerri especially since its designation as state capital and the creation of the capital territory. Land is guarded by the Owerri indigenes who farm on the land for a living and this is the main reason for their opposition to government's acquisition of their land without compensation. Rapid urbanisation and its accompanying rapid population growth especially since Owerri attained the status of state capital has led to fragmentation of holdings. The Old Owerri area is an example of fragmentation of holdings which led to very small plots making it difficult to provide sanitary facilities and means of access to certain areas.

Individual ownership of land has been increasing and promoting outright sale of land. This is contributing to the increasing number of landless indigenes of Owerri who are now tenants in their own land. Government through its legislation - the Land Use Act 1978 has access to land. Land values are high and have been rising both in well serviced layouts such as works layout, State Emergency Housing Phase I, the Government Area,

Old Owerri and Ikenegbu layout and in other residential areas such as Orji and Amakohia that suffer from inadequate infrastructural facilites especially drains.

The demand for buildable land outstrip supply in Owerri since it attained the status of state capital. There is high demand for the plots allocated by the state but access to them are becoming difficult. Developers buy land from the traditional land owners and this contributes immensely to the hike in prices.

CHAPTER SIX

LAND USE ACT 1978 IMPLEMTNATION AND LAND DEVELOPMENT IN OWERRI CAPITAL TERRITORY

6.10 Custoamry Procedure of Acquiring Land Before The Land Use Act 1978

The Owerri Igbos, like other Igbos, have a segmentary lineage system. All the people born in a village believe themselves to have descended ultimately from a common ascestor (Osadolor 1984). Each family was responsible for the sale of land. Land registeries were organised on clan basis to check possible irregularities and disputes arising from land. Any parcel of land sold by any family in Owerri was registered with the community land registries. It was the responsibility of the registries to investigate and check their registers to know whether such parcel of land had been sold to some one else or not.

6.20 Public Procedure of Acquiring Land Before The Land Use Act 1978

Apart from the customary procedure of acquiring land in Owerri before the Land Use Act 1978, there was also the public procedure whereby the government is involved. Two types of land were involved.

6.2.1. Private Land

Where land was acquired from a privately owned land the term of agreement was private. The applicant agreed with the vendor or land lord and a deed of Conveyance was drawn. The deed of Conveyance which could be assignment, lease, or partition was submitted to government for stamping and registration. The stamping and registration fees were paid to government. The applicant agreed with the land lord on the form of tenure and rent was paid by the applicant to the land lord.

6.2.2. State Land

In the case of state land, the applicant applies to Ministry of Lands and Survey for building lease and paid the necessary fees which included preparation fee, registration fee, stamp fee and building grant. Land rent was paid by the successful applicant to the government.

6.30 Public Procedure of Acquiring Land Under The Land Use Act 1978

Acquiring a piece of land in Owerri under the Land Use Act 1978 requires more sophiscated administrative process than before the Act. There is no short cut to the process and more over it is time consuming. As land is a highly sensitive issue the long process is worth it as it eliminates

any defects such as ensuring that there is no other interest in the piece of land being allocated and if so that adequate compensation is paid for such interest as provided in the Act. According to the Act, before an applicant can acquire a statutory right of occupancy the following procedure is adopted:

i. An applicant requiring a plot of land gets the application form from the Secretary, Land Use and Allocation Committee (LUAC) at the State Capital. He fills it giving all the required details and submits back to the committee along with other documents like title document, tax clearance certificate, survey plan and stamped self addressed envelopes. A file is opened for the applicant.

ii. On receipt of the filled form with the other documents and after checking all the items to ensure that the form was correctly filled along with the other documents the file is sent to the Director for survey (DS) at the State Capital to confirm that a copy of the survey plan was deposited with the Survey Department. On confirmation, the file is returned to the secretary LUAC.

iii. If the applicant complied the file is passed on to the Director for Town Planning at the State Capital for further action. But if he did not comply the applicant is written to comply

to enable the committee continue action on his file. The Director for Town Planning (DTP) sends two separate letters. One to the Area Town Planning Officer (ATPO) incharge of the area from where the application was made and the other to the applicant. A copy of the applicant's filled application form and a survey plan submitted by the applicant are forwarded to the ATPO. He is requested to chart the survey plan into the location's layout plan or master plan and comment on the application with regard to the suitability of the area for applied use or if the area is reserved for any future use. His comment will enable the DTP advise the secretary LUAC on the issue. The extract charting which should be in duplicate shows the name of the applicant, the uses to which the adjoining plots are put and the file reference. A proper record of this and other subsequent ones are kept with the ATPO. In the letter to the applicant he is referred to the ATPO for the processing of his application. He is requested to call at the ATPO's office to lead an official to inspite the site. He is advised to ensure that the survey pillars defining the boundaries of the plot are cleared of weeds and that figures on the survey pillars are legible. If the plot is developed the applicant is requested to tender a copy of approved building plan to the

inspecting officer.

iv. On completion of the exercise the ATPO sends his comments on the application together with the duplicate extract charting to the DTP at the State Capital. If the comments were favourable or adverse the DTP advises the secretary LUAC accordingly. On receiving from the DTP if the advice favours the applicant the secretary LUAC will on a scheduled date hold meeting with members of LUAC and based on the proceedings of the meeting the application will be recommended to the Commissioner who acts on behalf of the Military Governor. But if the advice from the DTP is not in favour of the applicant, the applicant is writtin to make amendments or corrections that are necessary.

v. Based on the recommendations from LUAC, the Commissioner approves the application. The approved application is sent to the Director for Land (DL) at the state capital. In the case of commercial and/or industrial development, clearance is first sought from the Ministry of Commerce and industry. And in the case of agricultural development, clearance is sought from the Ministry of Agriculture and Natural Resources.

vi. The DL sends offer of a grant and conditions of offer to the applicant who is supposed to go

through all the details and may accept by signing on the forms, He retains the original copy and returns the rest to the DL, who sends a copy of the returned copies to the Local government where the land situates. The DL also sends two copies of the returned forms to the DS with an endorsement requesting him to carry out a survey of the plot and furnish the title deed plans and description for further action. The DS is responsible for the survey of the area at the end of which he sends his bill to the Ministry for settlement. After the site has been surveyed the applicant is invited by the DL to pay all the necessary fees which include development fee depending on the purpose clause (residential, commercial, agricultural, industrial or other purposes) and deed (certificate of occupancy) fees (preparation, registration and approval).

vii. On payment of the necessary fees, the certificate of occupancy is prepared in quardruplicate for the applicant and sent to the commissioner for his signature on behalf of the Military Governor. The Commissioner returns the signed copies to the DL who sends them to the Register of Deeds. At the Registry the certificate is registered. The original copy is collected by the applicant, two copies are kept in the registry (one filed and the other for reference) and the fourth copy is

sent to the Local government where the plot situates. In the certificate of occupancy the yearly rent and the term or tenure are stated. The Lands department prepares other documents such as holders cards and rent cards which make for easy future references.

viii. Finally the successful applicant's file is passed on to the Director for Accounts and Stores to take particulars of rent at the end of which the file is kept in the cabinet. From here, reference could be made easily as regards to improvements and rent payments. Also reference could be made for any applications for sublease, mortgages, assignments and partitions.

6.40. Application of The Land Use Act 1978 In Owerri Capital Territory

Owerri, like any other town in Nigeria has been using the Land Use Act in its Land administration and as one of the country's land laws since its promulgation in 1978. The Act affected the various patterns of ownership and control of land in Owerri before the Act. And so it found it difficult at the initial stage using the Act.

From the general review of the various states' reports, monitored through quarterly meetings of all Heads of Lands Divisions in the country it became clear that while states in the northern parts of the country

had made substantial progress on the implementation of the Land Use Act 1978, because their Land Tenure Law 1962 was very similar to the Act; states in the southern parts of the country were reallystruggling at the end of the first year of the Act because of the land laws in these areas prior to the Land Use Act 1978 which were not similar to the Act (Siman 1983).

Later on, as Imo state was getting used to application of the Act, progress was noticeable in the Owerri Capital Territory. This is because the Land Use and Allocation Committee is part of the Ministry responsible for land matters in the state and membership of the Committee has included the Chief professionals in land matters : Directors for Lands, Survey and Town Planning. Also because the office of the Land Use and Allocation Committee has been physically attached to the Ministry responsible for land matters, remarkable degree of progress has been made. The inclusion of the Directors for Lands, Survey and Town Planning in the membership of the Land Use and Allocation Committee (LUAC) means also that they can put across their opinions in the committee's deliberations.

The functions of the committee as spelt out in the Land Use Act 1978 are to advice on allocation of land, determination of rent chargeable, issuing of application forms for statutory right of occupancy, resettlement of persons displaced on revocation of

occupancy on developed and undeveloped lands; and determination of disputes and compensation payable for improvements on land under the Land Use Act 1978. The functions of the Ministry charged with land matters (Lands, Survey and Urban Planning) include : preparation and processing application forms for certificate of occupancy for consideration of the Land Use and Allocation Committee; levying and collection of rents; preparation of layouts; land surveying, preparation and processing of certificate of occupancy and keeping records thereof, consideration of applications for consent to subsequent transactions on land, enforcement of cove-nants, assessment of compensation on revocation of rights of occupancy.

Considering the functions of the Land Use and Allocation Committee and those of Ministry of Lands, Survey and Urban Planning there is not supposed to be any conflict between the two bodies but often, there is, as the political appointed members of the Land Use and Allocation Committee always want to assume more powers than stipulated in the Land Use Act 1978.

CHAPTER SEVEN

SUMMARY OF FINDINGS AND RECOMMENDATIONS

7.10 Evaluation Of The Alternatives : Land Tenure System Before And From 1978

The advantages and disadvantages of the two alternatives are examined as displayed in fig. 7.01

fig 7.01 Advantages And Disadvantages of Land Tenure Before And From 1978

Criteria	Before 1978		From 1978	
	Advantage	Disadvantage	Advantage	Disadvantage
Political motive		Disintergration of the country	Intergration of the country	
Social motive		Group ownership of land based on ethnic or family relation	Group ownership of land based on the nation as a family	
Orientation and philosophy		Capitalist reflecting class distinction	socialist reflecting egaliterian society	
Form of Tenure		Various kinds in the country	uniform kind in the country	
Security of Tenure		Inadequate	Adequate	
Security of Credit	More			Less
Increase in Land value		To an individual	To the Nation	

fig 7.01 continued

Criteria	Before 1978		From 1978	
	Advantage	Disadvantage	Advantage	Disadvantage
Procedure for Acquiring Land	Shorter			Longer
Cost of acquiring land		High and higher with the activities of speculators	low but the indigenes still sell land and so high	
Incidence of litigations		High and promoted	low and discouraged	
Public Sector Programmes		Slow and some times halted	Fast development	
Private Sector Programmes	Fast development			Experience delays
Third party right (sublease)		Insignificant	Preserved	
Compensation	Both for natural land and improvements			For Improvement on land only
Fractionalisation of land (holding of small pieces of land in various parts of the community)		Encouraged	Discouraged	
Penalty for contravention	Highest formis demolition and recovery of cost thereof from the contravener			Highest form is court action with all its delays.

7.20 Chosen Alternative : Land Tenure System From 1978.

After a first evaluation of the advantages and disadvantages of the alternative, the advantages of land tenure system from 1978, outweighed the advantages before 1978. Equally the disadvantages of land tenure systems before 1978 outweighed the disadvantage from 1978. The decision therefore made is in favour of land tenure system after 1978. The advantages will create atmosphere for effective land development if well applied.

7.30 Effects of Application of The Land Use Act 1978 In Owerri Capital Territory

In chapter four attempt was made to state the general effects of the Land Use Act 1978. The political motive of the Act is to serve as an instrument for national integration. It is meant to control inflation in land prices, to secure for public benefit the communually created increases in land values and to ensure that land is distributed equitably and expeditiously for the purposes of development. In the present chapter (seven) effects of application of the Act in Owerri Capital Territory will be considered under the following issues and areas.

7.3.1. Planning And Compensation

Section 28 of the Land Use Act 1978 stipulates that it is lawful for the Governor to revoke a right

of occupancy for over riding public interest. One of the over riding public interest is the requirement of the land by government for public purposes. One of the public purposes is planning and laying out the area into plots for residential, commercial, industrial, agricultural and other purposes. The only means of fully achieving this is by acquisition of land and payment of adequate compensation to the dispossessed or displaced holders. For effective implementation of this, planning Authorities in Imo state whose function is to acquire land, design and develop layouts are under the Ministry charged with land matters (Lands, Survey and Urban Planning).

A significant issue in the implementation of housing programme of Owerri master plan is that of paying compensation to the original land owners of the land required by the government for the purpose of developing Owerri Capital City (Agwu 1988). As earlier stated, under the Land Use Act 1978, land can be acquired if the government wants to put the land into public use. Acquisition of land extinguishes the right of the person or original land owner to land so acquired. The Act also emphasised that compensation for an amount equal to the rent, if any and for the value of existing development on the land shall be made as on the date of revocation. But the Act was silent on the date the government shall pay compensation. It is therefore clear that

the original land owners are entitled to compensation but the arguement is when the compensation would be paid.

The effects of non payment or partial payment of compensation are significant in the rate of implementation or participation in so far as they affected the acceptance by the original land owners; of private sector development in Owerri Capital Territory. Table 7.01 shows investment in housing by the private and public sectors in New Owerri in 1986.

Table 7.01 Investment In Housing By The Private and Public Sectors In New Owerri 1986

Sector	Expected Provision	No. of completed houses	No. of uncompleted houses	Total Provision	Shortfall
Private	15358	81	23	104	15943
Public	808	212	34	223	585
Total	16166	293	57	327	15943

Source Agwu (1988) page 323

And so there are excessive parcels of land in Owerri acquired by government, where only a small portion will be developed and the rest lying vacant because of non payment of compensation to the original land owners.

The Owerri Capital Development Authority charged with the planning and development of Owerri Capital Territory has yet effectively to control development within the territory.

The consequence is that buildings spring up any where in the territory without control. On the contrary there is effective development control in the Capital City, but it pushes developers who cannot afford the high cost of land. The original land owners still sell their land because government was yet to pay them compensation for the acquired land. Table 7.02 shows the high and rising cost of land in the capital city.

Prices of standard Plot Size (15m x 30m)

Table 7.02 In Some Layouts In The Capital City

Layout	Price Per Plot		Percentage Increase
	1986	1990	
Amakohia	₦12,501	₦15,000	20%
Onitsha Road	₦25,000	₦30,000	20%
Ugwu Orji	₦13,330	₦25,000	87.5%
Ikenegbu	₦25,002	₦70,000	180%
Old Owerri	₦16,668	₦25,000	50%
Works	₦18,900	₦40,000	111.6%

Sources. Workshop Field Survey (1986) page 9 for 1986 prices.
Field Survey (May 1990) for 1990 prices.

Misuse of parcels of land for purposes other than those for which the plots were acquired occur in Owerri capital Territory. This is why, squatters are found in areas that have been zoned out for government development. This is sometimes as a result of improper means of acquisition and non involvement of community leaders and

so displaced persons refuse to move either because adequate compensation is yet to be paid to them or that they were not duly consulted during the process; an example is the site acquired for Imo State airport in the Owerri Capital Territory.

7.3.2. Developments

One principal area of land development in Owerri Capital Territory is housing. Without adequate housing, commercial and industrial development will not be very successful. Modern planning of Owerri started in 1976 when Imo State was created and Owerri was made the state capital (Agwu 1988). Schemes like Government station layout, Okigwe Road layout, State Emergency Housing Scheme, Ikenegbu Layout Extension, Federal Low Cost Housing Scheme, Onitsha Road Layout, Works Layout and Ugwu Orji Layout were prepared (see fig. 5.05). As capital of Imo State Owerri was transformed into functional administrative and commercial city.

It therefore, becames necessary to provide housing and office accommodations not only for about 10,000 civil servants of Imo State administration who had moved into Owerri immediately after the creation of the new state, but also for staff of private companies that

have moved in. Unrestricted immigration intensified the problem of accommodation so much that the number of unemployed and homeless increased and the city had far more demands made on its facilities than it could cope. Confronted with accommodation problems the state government gave priority to staking out land for housing estate and rapidly building homes (356 units) for its employees and offices for its operations. The Federal government in its own contribution provided the Federal Low Cost Housing Estate (336 units) for the low income earners. These actions only reduced the problems of accommodation but did not cure it.

While new development under government authority goes on fast and on a large scale private development shows a certain delay in Owerri. The Owerri Capital Development Authority has made available sixty two lay-outs in the Capital City by 1986 (Nze 1986). They comprised residential, commercial and industrial layouts. The designs of these plans have been very successful on paper and allocations have even been made on most of them. However actual development has not been implemented on most of them; some designed and approved in 1979. Works Layout whose scheme was approved in 1977 is expected to provide 492 dwelling units for 2952 persons that is six persons per household or occupancy ratio in 1986. But investment in housing in the layout so far made in 1989 consists of 45 dwelling units which amounts to only nine percent of the expected housing provision in the layout.

Some of the reasons given for the poor implementation of these schemes are that the state government did not provide the socio-physical infrastructures like water, electricity, road and drains to these areas. There are cases of failure to develop allocated plots on time. Generally private developers complain that they found it difficult to locate their plots in some of the layouts in the capital city because of lack of access road. Government on the other hand blame private developers for the delay. The arguement is that government has a legal instrument to revoke all allocated plots that were not developed after two years but it could not use it. Another reason given is that, some people who were allocated these plots are individuals who are unable to carry out the development without financial aid such as loans and mortgages.

And so on the part of the government the weakness of planning Owerri reflects those of Nigerian planning as a whole. Plan implementation is hampered by the nations dependence on petroleum oil as the major foreign revenue earner. Funding is the main issue for the plans implementation. The government of Imo state allocated 25 million naira to the implementation of Owerri master plan between 1976 and 1980 and in 1981, 4 million naira was allocated for the period 1981 to 1985. Up to 1985 the total actual expenditure from the 1976 was ₦2,023,483 (Agwu 1988). This amount did not account for expenditure incurred from contractor financed projects and expenditure

by private developers. It can therefore be considered too small to achieve any meaningful change either in the provision of housing or infrastructural services in the Capital City.

The Owerri Capital Territory Programme, like many other Nigerian Capital projects was planned after the Gulf war of 1973 which forced up the price of oil four times higher than the original price of oil in the world market. The planners of Owerri Master Plan in 1977 must have believed in the uninterrupted price of oil and were unable to consider the problem of funding should the oil price revert or even fall below its previous level. All the ambitions of that period face uncertainties of funding when the price of oil fluctuated between 30 United States (U.S.) dollars and below 10 U.S. dollars a barrel in the eighties and about half the quantity sold in the seventies. Nigeria produced less than one million barrels of oil daily in 1983 and sold it for about 30 U.S. dollars per barrel as compared with 2.5 million barrels per day in 1979 with a price tag of about 40 U.S. dollars per barrel (Federal Department of Information 1983). Arising from the problem of funding is the process of payment. Some contract payments are delayed and consequently cost in time and material increase supported by the rising inflation in the country.

On the part of the people Owerri has the problem of housing finance. This is because of its poor economic base which results from the general low income and poor

saving ability of the people. The low saving ability of the people and the stiff lending conditions of the financial institutions in Owerri contributed in hindering the people from financing the construction of their houses in their allocated plots. Table 7.03 shows the income earning of inhabitants of Orji and Old Owerri locations in Owerri Capital Territory in 1986.

Table 7.03 Income Earning of Inhabitants In Orji And Old Owerri Locations 1986

Income per Annum	Percentage Population	
	Old Owerri	Orji
< ₦1000	21.05	29.4
₦1001 - ₦3000	57.89	29.4
₦3001 - ₦5000	16.43	35.3
₦5001 - ₦7000	5.26	0
₦7001 - ₦9000	0	5.9
₦9001 +	0	0
	100.0%	100.0%

Source Field Survey September 1986 pp. A1(1) A3(11)

The Federal Mortgage Bank of Nigeria, Owerri makes loan available to the people for the purposes of owning their own houses at interest rate of 9% to 13 percent and with the condition of spreading the amoritization period over 25 years. The interest rate of 9½ to 13 percent are being calculated based on the value of the property for which the

loan is being granted and no longer on the amount given to the beneficiary.

In recent times, the Mortgage Bank is in short supply of funds due to inadequacies of Federal government budgetary allocation to it. The after effect of the latter is the sharp drop in the number of beneficiaries of the Mortgage bank's loan. Table 7.04 shows the number of beneficiaries of the Federal Mortgage Bank of Nigeria loan in Owerri between 1980 and 1986.

Table 7.04 Number of Beneficiaries of Federal Mortgage bank of Nigeria Loan In Owerri 1980 - 1986

Year	Number of Beneficiaries	Remarks
1980	5	There has been a sharp drop in the number of beneficiaries since 1984
1981	86	
1982	123	
1983	163	
1984	32	
1985	0	
1986	1	

Source: Federal Mortgage Bank of Nigeria Owerri Branch Office 1990

Recovery of loan from beneficiaries of housing oloan is a problem that is frustrating recycling of housing fund into continuing projects in Owerri. There is also high cost of land as earlier mentioned and infrastructure. The high cost of construction is hightened by high

consultancy fees and general inflation on materials used for provision of infrastructures such as cement, pipes, rods and others.

From the fore going analysis it is clear why the state government has not been able or found it convenient using the legal instrument to revoke all allocated plots that were not developed after two year.

7.3.3. Certiiicate of Occupancy

The Land Use and Allocation Committee is supposed to make recommendations on allocation policy of land to the Governor. Both the Governor's Office and the office of members of the Land Use and Allocation Committee are in the state capital. Applications for statutory right of occupancy from all over Imo state and beyond for land in Imo state are made to the secretary Land Use and Allocation Committee (LUAC) Owerri and the processing begins. from this office and end in this office at the recommendation stage for the Governor's approval. And, since it is this one office or committee that receives all applications for statutory right of occupancy from all over the state and beyond for land in Imo state it takes an applicant many years of untold hardship and he is subjected to the vagaries of bureaucratic action before action is completed on his application and he gets the statutory right of occupancy." No development is allowed

in any plot in a layout without the approval of the Planning Authority concerned which shall ensure that the proposal conforms with the provisions of the scheme. And no such permission shall be granted without the applicant first obtaining certificate of occupancy in accordance with the provisions of the Land Use Act 1978." And so the undue delay is significant in the implementation of housing programme in Owerri. Table 7.05 shows the legths of time taken to process applications for statutory right of occupancy for Governor's approval in Works Layout, Owerri.

7.3.4 Consent to Alienate Property

All applications for consent to alienate property are made to the Governor for his approval and processed at the state capital by the ministry charged with land matters (Lands, Survey and Urban Planning).

Table 7.05 Length of Time Taken To Process Applications For Statutory Right of Occupancy In Works Layout Owerri 1982 - 1989

Time Taken (months)	3 - 15	16 - 27	28 - 39	40 - 51	52-63	64-75	76-87
No. of Applications processed	17	9	6	4	4	1	3

Source: Land Use and Allocation Committee Office, Owerri May 1990.

And since, all the applications are treated only at the Ministry's Head quarter office at the state capital and the commissioner in spite of his other engagements on behalf of the Governor has to sign the approval letters of successful applicant, it will take the applicants years before he can get such approval. This undue delay in effect affects adversely the land and house owning class in Owerri; who use their properties to raise loans and advances from banks for the provision of more houses, commercial, industrial and agricultural developments. In the Owerri Master Plan Programme for industrial development 225 industrial plots or 55 hectares of land were expected to be developed by 1986, in the north west industrial area. But by 1988 only 10 plots 4.4 percent of the area. been developed and in the southern zone only four factories have been built which have not gone into production (Agwu 1988).

The problem is that the initiative comes from other agencies or private sector rather than from the Owerri Capital Development Authority or state government. And for this initiative from the private sector to be delayed unduely in the process of obtaining approval from the Governor for application for consent to mortgage property, economic and business activities in Owerri have been adversely affected. Industrial take off has been a matter very much in the future.

7.3.5 Penalties For Contravention

The procedure of dealing with contravention is cumbersome and the penalties ineffective in Owerri. The Owerri Capital Development Authority has been criticised for failing to effectively control development in the Capital Territory especially on the designated green parks along Nworie and Oatmiri Rivers (see fig. 5.03). Some developments were allowed on the desginated green parks not because they agreed with the master plan proposals but because the process of dealing with contravention is cumbersome and it takes years before penalty is handed down to a contravention by the law court. Private developers seize the opportunity to influence government officials and the illegal structures are allowed.

7.3.6. Vesting of Land In The State

The Land Use Act 1978 vests the land in the state, a kind and extent of control which it cannot otherwise have had through its others powers of legislation before the Land Use Act 1978 in Owerri. This system is expected to ensure a greater social justice in the distribution of land through its power to grant rights of occupancy. Additionally the state can impose restrictions on the amount of land an individual could hold in Owerri. In the

course of ensuring a greater social justive in the distribution of land in Owerri and additionally the state imposing restrictions on the amount of land an individual citizen could hold, there have been cases of allocations of plot made to the people (mostly civil servants) who have no financial resources to develop their allocated plots.

The arguement is that in trying to encourage the socialist motive in this way it has not solved the problem it sought to solve rather it created some problem; perpetuating the housing problem in Owerri. Development can be more effective under a system which permits free, individual enterprise and initiation. And so, in restricting the amount of land an individual should hold in Owerri, it should be done with caution.

7.3.7 Land Speculation

With the high population pressure since the creation of Imo State, land banking affects the rate of development in the Owerri Capital Territory. It has brought about the division of the society into land owning and landless classes. The Land Use Act 1978, as one of its objectives sought to check this incidence but in the implementation of the Act in Owerri it has not been successful. And so, land speculators in Owerri enrich themselves from government planning schemes which increase land values.

7.40 Recommendations For Effective Land Development

The various surveys carried out during the research and the foregoing discussion on the effects of application of the Land Use Act 1978 in Owerri Capital Territory are pointers to the fact that high cost of land, unnecessary delays in securing statutory rights of occupancy and getting approval for consent to mortgage property, inability of the Owerri Capital Development Authority to pay compensation to original land owners for land acquired, difficulties of allotees in gaining physical possession of their plots and allocation of plots to persons who do not have the financial resources to develop them are the problems militating against the implementation of the Land Use Act 1978 in Owerri Capital Territory.

Other problems include proliferation of undeveloped plots in the various layouts in the Capital Territory and lack of access road to allocated plots. Considering the magnitude of these problems the following recommendations to redress the situation for effective land development in Owerri Capital Territory are made:

7.4.1. High And Rising Cost of Land

The cost of land is high and has continued to rise in Owerri not withstanding the weak economic base of the city. What the Land Use Act 1978 sought to achieve, that is, to make land available and at reasonable price is not being realised (see Table 7.06).

Table 7.06: Official And Open Market Values For Standard Plot Size In Some Layouts In Owerri 1986

Layout	Density	Standard Plot size	Area in metres	Official cost of plot	Open market value
Amakohia	High	15m x30m	$450m^2$	₦541.80	₦17501.14
Orji	High	15m x 30m	$450m^2$	₦555.50	₦19141.00
Ikenegbu	Medium	15m x 30m	$450m^2$	₦464.40	₦30002.00
Onitsha Road	Medium	15m x 30m	$450m^2$	₦464.40	₦30002.00
Housing Area C	Low	15m x 30m	$450m^2$	₦464.40	₦30002.00
Housing Area H	Low	15m x 30m	$450m^2$	₦464.40	₦30002.00

Source: Field Survey Workshop 1986 page 20.

Acquisition of land extinguishes the right of the original owner to the land so acquired when he is paid adequate compensation. But the failue of government in paying compensation for economic crops and other improvements on land acquired coupled with the activities of speculators and inflation in the country has contributed to the high

and rising cost of land in Owerri. It is therefore recommended that the present official cost of plots should be revigwed upward. The Land Use and Allocation Committee whose function it is to determine disputes on compensation payable for improvements on land under the Land Use Act 1978 should also review amounts for various improvements up-wards so that adequate compensation would be paid to the original land onwers. Compensation should be made to original land owners when acquisition is being made. As soon as acquisition is completed, compensation should also be completed. Land speculation should be treated as economic sabotage by government. Anyone caught in such act should forfeit the piece of land to government and serve a jail term of not more than one year in audition. Recently Heads of Lands Divisions in the country have called on the government and recommended new compensation rates for crops and economic trees in respect of land acquired by government throughout the country (Topidi 1990). There would be no sale of land if adequate compensation is paid to the original land owners and as when due. Land speculation would stop if punitive measures are meted to the culprits.

7.4.2 Unnecessary Delays In securing Statutory Right of Occupancy

The present procedure for processing and issuing statutory right of occupancy in Owerri and Imo state as a whole is cumbersome and usually results in unnecessary delays. The period taken is longer than

the period before the Land Use Act 1978 However, acquiring a piece of land requires a sophiscated administrative process such as is the case under the Land Use Act 1978 becuase land is a highly sensitive resource. But the problem is on the unnecessary delay. It is therefore recommended that to avoid the present unnecessary delay, bottom-top concept should be applied instead of the present top-bottom concept. The bottom-top concept calls for decentralisation of the processing administrative machinery. The Zonal Land Office at Owerri, Aba, Umuahia, Orlu and Okigwe should be allowed to treat such applications in conjunction with the Zonal survey and Area Town Planning Offices.

Applications processed in this manner should be forwarded to Land Use and Allocation Committee at the State Capital for recommendation to the Commissioner who acts on behalf of the Governor. This proposal if adopted would ease the task and avoid concentration of function at the state capital. The concentration causes duplication of function, conflict of interest and discipation of scarce resources on the part of government and unnecessary delay to the applicants and so should be avoided for effective land development.

7.4.3. Unnecessary Delay In Getting Approval On Consent To Mortgage Property Applications

In order to help guard against cases of land litigations, the Land Use Act 1978 provides that a holder of statutory right of occupancy wishing to alienate

his property must seek the consent of the Governor. While a willingness to leave the resolution of problems such as land litigations to the courts cannot be considered unworthy past time for a society that has adopted the rule of law, it must be readily conceded that these disputes discipated energy and resources which could have been better applied to community development (Nnamani 1989). And so the administrative machinery involved under the Land Use Act 1978 provisions is in order. But the problem again is on the undue delay before the consent letters are signed. It is therefore recommended that the processing of these applications adopt the bottom-top concept and decentralisation of the administrative machinery so that the Zonal Land Offices in Owerri, Aba, Umuania, Orlu and Okigwe in conjunction with the Zonal Survey and Area Town planning offices treat the applications from their respective zones. Applications treated in this way should be recommended to the Commissioner by the Zonal Land officers of the respective zones.

7.4.4 Planning Authority Inability To Pay Compensation

In the case of Owerri Capital Territory, it is the inability of Owerri Capital Development Authority to pay compensation to the dispossessed original land owners. Owerri Capital Programme like many other Nigerian Capital projects was planned after the Gulf wars of 1973 which forced

up oil price four times higher than the original price in the world market. The Land Use Act 1978 was also promulgated after the Gulf wars. The planners of Owerri Master Plan and those who drafted the Land Use Act 1978 and planners of other Nigerian Capital projects must have believed in the uninterrupted price of petroleum oil and were unable to consider the problem of funding should the oil price fall to its previous level or below and a reduction in the quantity that is sold. And so all the ambitioin of the period faced uncertainties of funding of funding when the price of oil fluctuated between 30 U.S. dollars and 10 U.S. dollars per barrel and almost half the quantity that was sold previously being sold then. In addition the value of Nigerian currency fell and there was inflation in the country. All these contributed to governments budgetary deficits affecting all arms and agencies of government. And so funding is the problem.

According to Nze (1986), a cost estimate made in one of the residential layouts in Owerri Capital City in 1985 showed that it would cost as much as ₦5.8 million to provide full infrastructure in that layout and pay compensation for economic crops. The layout comprised 224 residential plots, 63 spaces

commercial plots, 4 public plots, 7 open spaces and a zone of 136 mechanic plots. This cost when spread according to him showed a cost of ₦8000.00 for a plot of the size 1000 square metres. The question is who bears the cost, government or the plot allottee?. Hitherto this has been by both parties. The allotee pays planning/development rate deposits of ₦1500 average per allotee and the state government by subsiding the Planning Authority.

With increasing cost of making these payments and providing these services the burden is now weighing on both sides with the result that finances are no longer enough. The answer obviously is not to stop planning nor reducing the present scale of planning since, the rate must at least keep pace with the growth of population, the growth of town and villages and the rate of development generally.

In making recommendation to alleviate these problems enough premium cost of compensation for economic crops and trees in respect of each layout should be charged on all developable plots by the Owerri Capital Development Authority. The Authority should also levy appropriate planning rates approved by the Governor and these rates should be collected in instalments over a period of 5 to 10 years. Owerri Capital Development Authority may, with the approval of the Governor raise loans from development banks for development. With these recommendations applied the Authority will

be able to raise money for payment of compensation to dispossessed original land owners.

7.4.5. Difficulties In Gaining Physical Possession of Plots By Allotees

Beneficiaries of plots in some layouts in Owerri find it difficult to gain physical possessions of the plots. The Owerri Capital Development Authority officials complain that Original land owners interferred with the implementation of the plan because government acquired their land without paying them compensation. They go as far as threatening the lives of officials carrying out land survey and removal of beacons. Consequently the rate of development in New Owerri has been slowed down considerably. The purpose of the Land Use Act 1978 is to ease the public requisition of land. If there is to be a completely satisfactory basis for planning which gets rid of the above difficulties, it is recommended that adequate compensation should be paid to the dispossessed indigenous land owners. They should be convinced that the land no longer belongs to them and this conviction will only come after full compensation is paid as authorised by the Land Use Act 1978. Government officials can then carry out their official duties in the field and beneficiaries of plot allocations can with ease gain physical possession of their plots.

7.4.6. Allotees Who Cannot Develop Their Plots

There is also the problem of state government allocating plots to those who have not got the resources to develop them in Owerri Capital Territory. This is in an effort by government to ensure that a greater social justice in the distribution of land through its power to grant rights of occupancy. In implementing the provisions of the Land Use Act 1978 to achieve this objective it has created the problem of allocating plots to those who do not have the resources to develop them and proliferation of vacant plots in many layouts in Owerri.

It is therefore recommended that much as government tries to ensure a greater social justice in the distribution of land it should also ensure the abilities of the allotees to develop the plots as this would ease the housing problem in Owerri. Development can be more effective under a system which permits some freedom of individual enterprise and initiation. Due to the problem caused by stiff lending conditions of financial institutions; it is recommended that state government should direct these financial institutions to ease their lending conditions in order to benefit many people particularly the low income earners. Certificate of occupancy should be accepted as sufficient collateral security for obtaining loan for housing provided

the applicant has a regular source of income. All these notwithstanding a clause in the statutory certificate of occupancy paper (Land form 1A) which mandates the holder of certificate of occupancy to start development on the site within two years of the grant of such certificate should be enforced.

Where the applicant does not commence development in his allocated plot within two years of the grant of such certificate, it should be revoked and the plot allocated to one who can develop it. This recommendation is based on the presumption that the State government must have surveyed the plots, provided the necessary infrastructures and settled compensation claims.

7.50 Policy Statement on The Land Use Act 1978.

It is in the opinion of this research study that the Land Use Act 1978 be adopted and applied in the statutory shaping of land law and land administration in the country.

QUESTIONNAIRE

(For public servants connected with land matters in Owerri especially Land Use and Allocation Committee and Ministry of Lands, Survey and Urban Planning)

- Any information obtained for this research is purely in fulfilment of an academic requirement.
- Please tick X or make statement where required in the provided. Space.

1. Respondent No. .....
2. Official Address: .....
3. Sex: Male ..... Female .....
4. Marital Status: Married ..... Single .....
5. As a public officer connected with land matters do you think the process of acquiring land has become easier since 1978? Yes: ..... No: .....
6. If "Yes" what major successes do you think have been recorded? (please comment) .....
   .....
   .....
   .....
7. If "No" what do you think is responsible for the difficulties? (please comment) .....
   .....
   .....
   .....
8. What has been the attitude of the public towards the 1978 Land Use Decree from your own observation?
   (a) Very good cooperation .....
   (b) Good cooperation .....

9. To what extent could you say that the Land Use Decree has achieved its objectives in Owerri?

(a) 10% - 20% ..... (b) 30% - 40% .....

(c) 50% - 60% ..... (d) 70% - 80% .....

(e) Above 80% .....

10. What suggestions could you offer for a greater achievement of the objectives of the Land Use Decree of 1978 .....

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11. By what method(s) was land disposed before 1978?

(á) By sale ..... (b) By lease .....

(c) By mortgage ..... (d) By pledge .....

(e) By sharing .....

12. By what method(s) is land disposed after 1978?

(a) By sale ..... (b) By lease .....

(c) By mortgage .....

(d) By Certificate of Occupancy .....

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