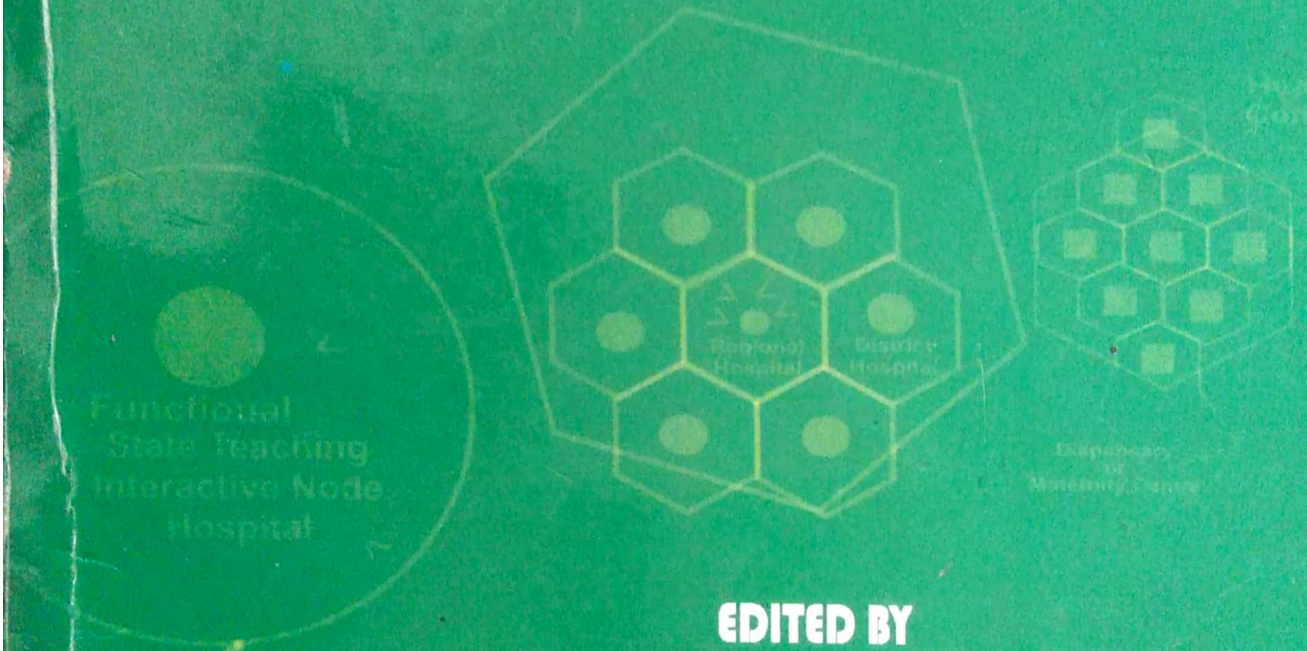
CONTEMPORARY CONCEPTS IN PHYSICAL PLANNING



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LAYI EGUNJOBI



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E-mail: layiegunjobi@yahoo.com

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LAND

A.I. Bako, W.M. Raheem and A.O. Abdulyekeen

28.1 Introduction

According to Stewart et al. (2015), all human life ultimately depends on land, including the soil and water found there. From land, food is grown; on it protective shelters are raised; and through and across it, the fresh water we drink is purified and delivered. Land provides humans with the means to live; land has been a patient provider of vital resources. Stewart et al. (2015) further expressed that at the start of the 21st century, our lands are no longer able to keep up with the pressures placed on its limited resources. Increasing misuse and demands for its goods are resulting in rapidly intensifying desertification and land degradation globally which is an issue of growing importance for all people and at all scales.

United Nations (2005) states that the rate at which contemporary cities are growing attest to the rapid urbanization of the world population, which has

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been the widespread conditions for increase in the demands on land to produce food, energy, water, resources, shelter and livelihoods. Stewart et al. (2015) opines that environmental shifts, induced through stressors (for example, climate change) and dissolution of ecosystem stability, are further decreasing the ability of land to respond resiliently to natural or anthropogenic pressures.

Sustainable spatial planning is highly essential to safeguard the diverse functions of land through active management of land resources, acknowledging both the competing forces behind growing conflicts over the use and underlying necessity for prudent management of land and soil as natural resources to secure access to productive land, which is critical to the millions of people living in urban and rural areas of the world. According to International Fund for Agricultural Development (2008), productive land reduces vulnerability to hunger and poverty; influences capability to invest in productive activities and in sustainable management of resources; enhances prospects for better livelihoods; and helps develop more equitable relations with the rest of society, thus contributing to justice, peace and sustainable development.

28.2 Definitions, Descriptions and Scope of Land

Land can be defined as the total solid crust of the earth surface, including those features permanently attached (by nature) such as forest, hills, valleys and water bodies up to the sky (air space) and also the resources found therein (Gaddy and Hart, 1993). As the foundation of all forms of human activities, food, shelter and space for other activities are obtained from land. As rightly observed by Gamu (2003), nothing is achievable without land; and if its management, in terms of delineation, distribution, accessibility, ownership, uses and control are very problematic, then the populace will find it difficult to

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develop in several spheres. Consequently, land and land resources need to be properly harnessed and managed to sustain current needs and ensure adequate provision for future generation (Ibidapo-Obe, 2003). Lawal (2000) defines land to include not only the ground or soil, but also everything which is attached to the earth, whether by course of nature, as trees, or by the hand of man, as houses and other buildings. It also includes not only the surface of the earth, but also everything under it and over it.

According to Black's Law Dictionary, 7th edition, land is an immovable and indestructible, three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface and everything growing on or permanently affixed to it. In its legal significance, "land" is not restricted to the earth's surface, but also extends below and above the surface. Land immovable is distinct from chattels, which are movable. It is also in its legal significance indestructible. The content of the space may be physically severed, destroyed or consumed, but the space itself and so the "land" remains immutable. The meaning of land as provided for under the interpretation section (section 91) of the 1992 Nigeria Urban and Regional Planning Decree states thus: "land includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals."

Land is a delineable area of the earth's terrestrial surface, encompassing all attributes of the biosphere immediately above or below this surface, including those of the near-surface, climate, the soil and terrain forms, the surface hydrology (including shallow lakes, rivers, marshes, and swamps), the near surface sedimentary layers and associated groundwater reserve, the plant and animal populations, the human settlement pattern and physical results of past and present human activity (terracing, water storage or drainage structures, roads, buildings and so on (FAO, 1995).

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FAO has also put forward a simple definition of land cover that is still widely accepted and used nowadays: "land cover is the observed biophysical cover on the earth's surface" (Di Gregorio and Jansen, 1998). It includes all types of vegetation and human structures that cover the land surface. If the concept is strictly considered, "areas where the surface consists of bare rock or bare soil are describing land itself rather than land cover'. From time immemorial, land has remained pivotal to any meaningful development of man and his society. The continued existence of man and his growth depends on availability of land for the much needed development. The important resource of the earth which cannot be reproduced, destroyed nor depleted can, however, be mismanaged. Once mismanaged, the whole economy is distorted and the social and economic fabric of the state disintegrates to the detriment of man and his society. This is an inescapable consequence, as land provides shelter, food, minerals and other resources needed for man's development.

Outside its physical direct importance to man, society and the state, land also remains, to date, the most viable and always sought-after security for bank loan and security advances and a pillar in the development of effective and efficient commerce in Nigeria. Thus, the way and manner land ownership is structured, title is obtained and land documentation and transaction is framed has a direct impact on the nation's economy and man's development. It is, therefore, imperative that the management of such core resources should be as to produce the best for the benefit of man. The importance of land and its centrality, the supply of land, unlike ordinary commodities, cannot readily be multiplied. The state of affairs is complicated by the fact that, while the supply of land is not increasing, population increase on a daily basis and the need for land for numerous purposes becomes more pressing. Consequently, land is definitely a scarce resource and its careful management is essential for economic development and the protection of civil sccieties.

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The importance of land management to a society cannot be ignored, irrespective of the level of economic development of the society. Good land management ensures that property rights are well defined and thus easily defended and that the incidence of socially disruptive disputes relating to land is minimized. Land has many facets and can be viewed from different perspectives depending upon the context in which it is used and the circumstances under which it is considered. From the legal perspective, land (real estate) refers not only to the "surface area (of the earth) but also to things such as trees, which are attached to the surface by nature, buildings and other improvements attached by man, and to those objects of value which lie either above or below the surface". This legal concept of land does not fully accord with that of physical planning, as land does not include "building and other improvements attached by man."

Lloyd (1966) claims that, in Yoruba customary law, a distinction is drawn between land (the soil) and improvements thereon. Coker (1966) states categorically that the term land includes the buildings thereon. Coker's view, which appears to be in line with judicial decisions on the subject is however to be preferred. On the other hand, the Property and Conveyance Law of Western Nigeria defines land "to include any tenure or parts of buildings and other corporeal here-determents'; also a rent and other in corporeal here-determents, and an easement, right, privilege or benefit in over or derived from land." While also dealing with the legal concept of land under the customary law, Olawoye (1974) states that land includes the surface of the earth, the subsoil and the airspace above it as well as all that are permanently attached to the soil. It also includes streams and ponds.

The scope of land is far wider than the surface area of the earth. In physical planning, land is synonymous with the physical environment (of man) and space. According to Barlowe (1985), land may be thought of as space-room and surface within, which and upon which life takes place; land as space

includes not only the surface of the earth, but also cubic space. Land thus involves the space beneath the surface where minerals are found and from which they might be removed, the space above and about the environment. It is evident from this exposition that the three terms – land, physical environment and space – are synonymous. Physical planning therefore, is basically concerned with ordering of structures and activities in space in a rational, environmentally sustainable manner to achieve health, convenience, economy, safety and beauty (Egunjobi, 1999).

The link between land use planning, physical (environmental) planning and spatial planning can be explained as the factors responsible for poor urban planning, design and management in shaping of the urban environment, and the allocation of urban land uses. With the advent of modernization, which placed all emphasis on land, and the increased growth in population, the relationship of man to land increased and individuals' need to own land became astronomical. The increase in demand for land, however, is not matched by increase in its production, hence the need for effective land management system capable of allaying the fears of all and sundry. The current system of land titling, ownership, possession and administration in Nigeria is fraught with so much uncertainty, insecurity and bureaucracy that leave its operation at below optimal level for the subsistence of man and the nation's economy.

28.3 Conceptual/Theoretical Issues on Land and Literature Review

Land in the context of urban and regional planning is common currency. Existing theory, concepts and ideas related to land studies have been reviewed and used as foundation with the aim of projecting the relevance of land in planning.

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28.3.1 Concept of Land

The concept of land rent gives explanations on why people demand for land, and place value on land resources as well as the incentive which man has for owing land. Land rent greatly influences allocation of real estate resources between individuals and between competing uses. In addition, much consideration is given to it in lease arrangement, land development and various usages of land resources. For instance, the right to use a piece of land for any developmental purpose attracts annual, monthly or weekly payment or, as the case may be, rent. From a layman's point of view, "rent is the payment made to a property owner by another person for the use of his land or building". Thus, people commonly speak of house rent, room rent, ground rent, and any other form of rent.

(a) **Contract Rent:** this simply means the actual periodic – yearly, monthly or weekly payments made by occupiers or tenants to landlords for the use of their lands and buildings. The amount payable is normally agreed on by the parties in advance and forms the basis of the contractual agreement. The concept of contract rent is more or less synonymous with the popular meaning ascribed to the term "rent". However, it may be less, equal to or more than economic rent, depending on the bargaining ability of each of the parties, degree of need and nature of demand and supply factors.

(b) **Land Rent:** This is a specialized concept, which represents the theoretical earnings of land resources. It can be defined as the economic return that accrues or should accrue to land for its use in production. The concept applies to all earnings on land resources and can be used to encompass all earnings of land or sites and improvements made thereon. Land rent is of three categories.

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- The first is the ground rent or site rent, which is associated with the returns on building sites, bare ground and raw land.
- The second is known as improvement rent payable on buildings and man-made improvements attached to land. Man-made improvements are in various forms.
- The third type of land rent is the one attributable to location, which arises because of favourable location, fertility or equality of a particular tract of land, otherwise known as location rent.

28.3.2 Land Use

As for land use, it has been recognized that an international agreement on the definition is still lacking, in spite of the attempts made since the 1960's (Jansen, 2006). Jansen (2006: 129) states that "the term land use has different meanings across disciplines" and those different perspectives may all be valid.

According to Duhamel (1998), different definitions are derived from two possible approaches: the functional and the sequential. According to the functional approach, land use corresponds to "the description of land in terms of its socio-economic purpose" (Duhamel 1998:5). On the other hand, the sequential approach, adopted by FAO, defines land use as "the arrangements, activities and input people undertake in a certain land cover type to produce, change or maintain it" (Di Gregorio and Jansen, 1998).

As observed by Young (1993), the aim of land use planning is to order and regulate land use in an efficient and ethical way, thus preventing land use conflicts. The fundamental principles of land use planning include: to encourage agricultural operations and ensure the preservation of the productivity, availability and use of agricultural lands for continued

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production of agricultural products; to preserve the natural, historic, recreational and scenic values, along with the healthy economy of the forested land and resource preservation districts so as to ensure that development in those areas is in conformance with their natural resources, including soil, water, air, view sheds, scenery and fragile ecosystems; and to encourage residential development in designated growth areas. Others are to preserve and protect the historic character and features of the country; to ensure the provision of capital improvements including schools, parks, roads and sewer and water service, and to enhance the quality and character of rural and open space environments; to promote only economic growth that assists in maintaining our existing balance and is compatible with the environmental quality and rural character and does not adversely affect active farm operations, forestry operations, residential neighbourhoods, the tourist industry and country's fiscal stability; to protect the country's fiscal capabilities. Also included are to encourage citizen involvement in the planning process; and to promote the philosophy that land is a finite resource and not a commodity, that all citizens are stewards of the land and that the use and quality of the land are of prime importance to each present and future citizen as well as to the commonwealth, the country and, indeed, the world.

28.3.3 Sustainable Land Management

Sustainable land management practices are those that serve to maintain ecological resilience and the stability of ecosystem services indefinitely, while providing sustenance and diverse livelihoods for humans. This management does not refer to a single method or practice, but is rather a portfolio of possible technologies, practices, and approaches to land management that are

implementable at the local scale. It also involves all relevant and affected stakeholders and their needs in a participatory manner, and is supported by the broader cultural, economic, environmental, legal, political, technical, and social framework and environment. It needs to be adaptive and work with iterative feedback, as the context for sustainable land management is constantly shifting with changing environments, populations, and demands.

28.3.4 Guided Land Development

Guided land development uses the provision of infrastructure as a mechanism to guide urban development. It is done in partnership with landowners who pay for the cost of servicing their land through donation of land for public infrastructure and payment of a betterment levy (UN-ESCAP, 1998). Guided land subdivision, while being enticing on paper, is often fraught with difficulties on the ground for two reasons, namely:

(i) As the scheme depends on the content of the landowners, it cannot be applied in areas with fragmented landowners. Too many landowners mean that greater time and effort is needed in building consensus. It is very likely that those landowners who have access to road will refuse to participate voluntarily. Landowners may want to continue the rural use of land.

(ii) Collection of betterment levies, particularly on an annual basis may not be acceptable to landowners. Or even if it is acceptable, they may, for various reasons, default on the payments. The option of holding a land parcel as collateral against default of payment may not be feasible. Judicial proceedings in civil cases in most developing countries take several years to complete. This would mean that the

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particular parcel of land will be out of market until the civil case is settled. Moreover, it may be politically undesirable to repossess lands of small landowners who are most to default most.

Despite these shortcomings, guided land development is a proactive planning tool for land development and is more efficient than regulatory planning or regularization. It is undertaken in situations where planning capacities as well as resources are inadequate to ensure sufficient land is supplied for expansion and the development of such land is guided in advance. A prerequisite for the use of this tool is an outlined strategic plan that identifies the main areas for phased urban expansion. Another important merit of "guided land development" lies in its protection of the areas of greatest environmental significance (UN-Habitat, 2009).

The guided land development as a planning tool could also be applied in situations where partnerships with private formal and informal or low-income land owners or groups in order to consolidate parcels of land for service provision. Subdivision by way of mutually beneficial agreements is also essential. Unrealistic standards and cumbersome planning procedures should be reviewed to allow flexible attitudes to standards and participatory approaches adopted. Working with those who provide large quantities of affordable land and housing, through advice and advocacy, should be stressed rather than stringent regulation. Phased development should be ensured. This approach, known as "land readjustment," is particularly relevant where public authorities find it challenging to assemble sufficient land and finance for infrastructure and investment and acquisition of sites for major public facilities owing to the fact that they may no longer possess extensive land areas and need to work with private owners and developers.

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28.4 Land Management and Urban and Regional Planning Practice

Land management is the process of managing the use and development (in both urban and rural settings) of land resources. Effective management of land in Nigeria involves organizing, coordinating and controlling the land resources in Nigeria in order to attain optimal benefit for society (Banire, 2009). Land is undoubtedly a major factor in the social and economic development of every country. Every human activity takes place on land. However, the full potential of land as a basic factor of production can only be realized with appropriate documentation, titling and registration. Consequently, a bare base land for ordinary human activity can become dynamic and more valuable with confirmed title. Land titling is a policy intervention to recognize rights in land, guarantee tenure and record interests, improve land market and encourage development. The world over, land titling is a central concern and a catalyst for national development.

Nigeria is endowed with vast land resources, which are largely untapped. This situation has thus resulted in the low physical development of the country. Land remains a dead capital as long as the process to release its full economic potential is not realized. Until Nigeria's land is put into more functional and effective use through titling and registration there cannot be effective land development. This is an imperative for national development because it will attract development funds both for the individual and government. Effective land management is aimed at unlocking the wealth in land by providing effective and valid title. An effective land management policy that encourages good and effective titling benefits not only the present generation, but also posterity. It is a process that provides the appropriate machinery for controlling possessory rights and land use. It also serves as the instrument to ensure equitable access to

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land by stakeholders within the policy framework of a country. Furthermore, it determines how government can offer security of tenure, regulate land markets, implement land reforms, protect environment and levy land taxes to enhance the utility and value of land.

28.4.1 Existing Statutory Laws in Lagos State in Respect of Land Management

Planning laws are tools to guide orderly arrangement of physical development activities in accordance with contemporary planning principles in any society. Planning laws are to provide legal basis for directing and controlling the present and future of the built environment in the interest of society as a whole. A harmonious relationship between and among various land uses should be ensured. Planning laws are also to provide various land use should be ensured. Planning laws are also to provide framework for efficient and harmonious planned environment for all landed activities, such as economic, socio-cultural, residential, institution, municipal service and facilities. The most ever significant development in the field of planning legislation in Nigeria within the first half of the 20th century was the enactment of the Town and Country Planning Ordinance of 1946. This legislation is cited as Cap 155 of the 1948 edition of laws of Nigeria.

(a) Registration of Titles Law Cap R4, Laws of Lagos State 2003

This law provides for two registration schemes, compulsory and voluntary registration, under Sections 5 and 6, respectively. The law also provides, under Section 9, for the Registrar of Titles to register an interest with a view for first registration upon being satisfied that the applicant for first registration owns the interest claimed. The registrar shall register them accordingly; otherwise, the application is dismissed. Under the law, charges and other encumbrances on land are preferred in line with the order of

registration. Thus, registered charges shall as between themselves rank in the order in which they were registered and not in order in which they are created. The law also empowers registered owners to bind successors and to enforce contracts relating to registered land against future transferees. To protect holders of interest in land, Section 43 provides that any person claiming an estate, interest or claim in any unregistered land or lease may lodge with the registrar a caution against the first registration of the land or lease without notice to the cautioner. Furthermore, the owner of an unregistered estate or interest or claim in land may protect the interest by registering a restriction on the land with the registrar, in accordance with Section 45.

(b) Land Instrument Registration Law Cap L54 Laws of Lagos State 2003

This deals with the registration of instruments relating to land. By Section 6 of the law, every instrument executed after the commencement of the law shall be registered while Section 7 also provides for the registration of instruments executed before the commencement of the law. The effect of non-registration depends upon the nature of title held in the land. Where the instrument relates to land held under a state grant executed after the commencement of this law, the instrument shall be void unless the same is registered within six months from its date (or in the case of an instrument whereby land is granted by a native or non-native, from the date on which it receives the Governor's consent) (see Section 14). The Act also empowers the registrar to extend the time limit for the registration if satisfied that the delay was without neglect or default of the applicant. It is noteworthy that registration of instruments shall not cure any defect in the instrument or confer upon it any effect or validity which it would not ordinarily have had.

(c) Land Rates Law Chapter L59 Laws of Lagos State 2003

This law makes provisions for levying development charges, ground

rents, premium and other incidental rates on allocated land in Lagos State.

(d) **Land Development (Provision for Roads) Law Cap L57 Law of Lagos State 2003**

The purpose of this law is to provide for any necessary reservation of land for roads in cases where land is sold off in lots.

(e) **State Lands Law Cap S11 Laws of Lagos State 2003**

The law makes further and better provision for the management and disposal of state lands. Section 3 of the law provides that the Governor shall not sell any state lands except with the approval of the executive council first obtained. By virtue of Section 11 of the law, all buildings and improvements on state lands, whether erected or made by the lessee or not, shall, on the determination of the lease, pass to the state without payment of compensation, unless there is a special provision to the contrary in any lease.

28.4.2 Land Resource Development Control

Land use control is a collection of interrelated paralegal and administrative techniques and instruments designed to safeguard, regulate, conserve and disburse land or part thereof in the interest of the overall community (Agbola, 1985). It can also be defined as the control of the use of land, the character, appearance and arrangement of buildings and facilities to ensure economy, convenience, slight results and aesthetics (Onokerhoraye and Omuta, 1994). According to Agbola (1985), there are different types of development or land use controls in Nigeria. There are density control (the prescribed number of rooms to be built on a given area of land together with the overall population density per acre or hectare): zoning (type of use to

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which land in a given location could be put); building lines (building setbacks from the existing or proposed road network): lighting; plot ratio; building height regulation; type of materials; and many others.

Mabogunje et al. (1978) are of the view that control instruments could be functionally classed into three, namely: space-use density; health and sanitation; community facilities and services. Agbola (1985) asserts that land use control measures can also be categorized into two – positive and negative actions of the government. Accordingly, the aforementioned types of land use control fall into the realm of negative control measures, in which government power is used to restrain or otherwise direct private land use and development activities. Positive measures, on the other hand, entail the provision of infrastructural facilities. Whether positive or negative, land use control measures are embarked upon with the aim of solving any identified environmental problems by ensuring compatible uses of land, bringing substandard non-conforming area into line with a general plan and controlling land crowding. The ultimate aim which urban land uses attempt to achieve is the creation of functionally efficient physical environment (Omuta, 1986).

28.5 Land and Urban and Regional Planning

Land is the bedrock of urban and regional planning profession because virtually all that planners do are on, under and above the surface of the land. The relevance and relationship between land and urban and regional planning include the following.

(i) Planning deals primarily with land, the more reason it is described as the art and science of ordering the use of land and the character and siting of buildings and communication routes so as to secure the maximum practicable degree of economy, convenience and beauty. The characteristic of successful planning is rooted in the activities on,

under and above the surface of the land, which include: promotion of accessibility of home to work, shops, schools and entertainment; accessibility of industry to source of labour, power and raw materials and so on; separation of incompatible land uses from one another and association of compatible or mutually helpful uses; employment of resources as economically as possible, so as to achieve the greatest possible measure of improvement with necessarily limited means; and carrying out of all development in as visually pleasant a manner as is practicable.

(ii) According to Akimoladun (1999), urban and regional planning sees to land use control. This is carried out by designating the way land may or may not be developed through zoning and building restrictions; preventing misuse of land that might injuriously affect the interest of the community by preventing slum settlement or unnecessary intense development; preventing the abuse of land by preventing abortive subdivisions, and cut over lands; regulating the non-use or disuse of land by taxing to enforce development, clearing unmarketable titles, restraining owners of occupied dwellings from continuing their use; and guiding the reuse of land for more appropriate purpose through redevelopment, slum clearance and rehabilitation.

(iii) Planning constructs the official formulation of the future uses of land, including the public and private improvements to be made on it and the assumption and reasons for arriving at the determinations. This is done by preparing a land-use plan that projects private and public street plan which serves as a guide to official decisions with regard to land acquisition for public purposes as well as to private decisions on the location of shopping centres, residences and industry. It is also a

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guide to decisions on zoning, subdivision control, urban renewal and future capital budgeting requirement.

(iv) Planning is basically concerned with determining the location, intensity and amount of land development required for the various space-using functions of city life-industry (wholesaling/retail), business, housing, recreation, education, institutions (private/public) and religious and cultural activities of the people.

(v) Planning surveys the uses to which land is put in a particular area, usually summarized both in map form and statistically, that shows developed and vacant land, street, commercial, public buildings, and so on. Acreages are often summarized in terms of percentages for the developed portions and for the area as a whole.

(vi) Planning is involved in a practice where the area of the city is divided into sub-areas, districts or neighbourhood. Within each of these smaller areas, the quantitative and qualitative aspects of land use are prescribed within accepted levels, such as residential lot sizes, and the uses made of the land are prescribed as well.

28.6 Conclusion

Land is essential in human survival but there are several challenges confronting land in urban and rural areas of the world, which include poverty and insecurity, in addition to severely hampering ecosystem services. The main drivers of land degradation include: soil erosion (wind and water induced), nutrient depletion (caused by overgrazing, de-vegetation, and limited application of fertilizer), degrading crop production practices and decline use of fallow. Several policies, laws and actions have

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been taken in respect of the use and activities on land but, more than these, the professionals, policy-makers, stakeholders and the general public must unanimously address this issue and restore the lands sustainably.

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