

Land Use Act Draft Regulations

–Comments & Observations

By

Dr. Olusegun Mimiko

Ondo State Governor

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Outline

Draft Regulations—Litmus Test of true Federalism

Federalism—Recognition of Supremacy of State Gov't in the Control & Management of Land in the Land Use Act, LUA

Control & Management of Air, Land, and Subsurface Resources [An Overview]

Preliminary Review of Draft Regulations

Concluding Remarks

Draft Regulations— Litmus Test of True Federalism

- 1) **Consistent** with the letter and spirit of the LUA delineation of state and federal role in control and management of land.
- 2) Shall not **diminish** or likely to diminish the preeminent role of respective state governors over land matters within each state territory.
- 3) Shall not **blur** the unique roles of state / federal in land management as provided for in the LUA.

**LITMUS TEST OF CONSISTENCY
WITH LUA & TRUE FEDERALISM**

State Interest in Land [i]

1) Territorial Integrity

- Regulations must not promote *de facto* adjustment of state land area contrary to existing practice and intent of the LUA.

2) Land Acquisition

- Regulations should not deviate from the Grantor-Grantee model for State-Federal land transaction created by the LUA;
- Avoid the imposition of additional burden on state for land acquisition
- Shall not confer an advantage on the feds in land acquisition process

State Interest in Land [ii]

3) Title Registration

– Uniform land titling and registration has its advantages, however due to the uniqueness of each state, and the provisions of the LUA on “control and management” of land, some of the standards need to be optional to encourage competition amongst the states on implementation choices.

4) Secondary Transactions

– Each state is unique in terms of its socio-economic environment, hence regulations should not be unduly restrictive and stifle innovation by different states to determine best way to encourage secondary transactions.

State vs Federal Role under LUA [i]

State

- Section 1 of the LUA vests all land in a state in the Governor of that State to be held in trust ...
- All land in urban areas shall be under the control and management of the Governor of each State. [Section 2(1)(a)].

Federal

- 49(1) Nothing in this Act shall affect any title to land ... held by the Federal Government ... at the commencement of this Act and, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.

State vs Federal Role under LUA [ii]

State

- Section 1 of the LUA vests all land in a state in the Governor of that State to be held in trust and administered ...
- All land in urban areas shall be under the control and management of the Governor of each State. [Section 2(1)(a)].

Federal

- 51(2) The powers of a Governor under this Act shall, in respect of land comprised in Abuja, or any land held or vested in the Federal Government in any State, be exercisable by the President or any Minister designated by him ... and references in this Act to Governor shall be construed accordingly.

Sec. 46, Regulatory Powers

(1) The National Council of States may make regulations for the purpose of carrying this Act into effect and particularly with regard to the following matters—

(a) the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians;

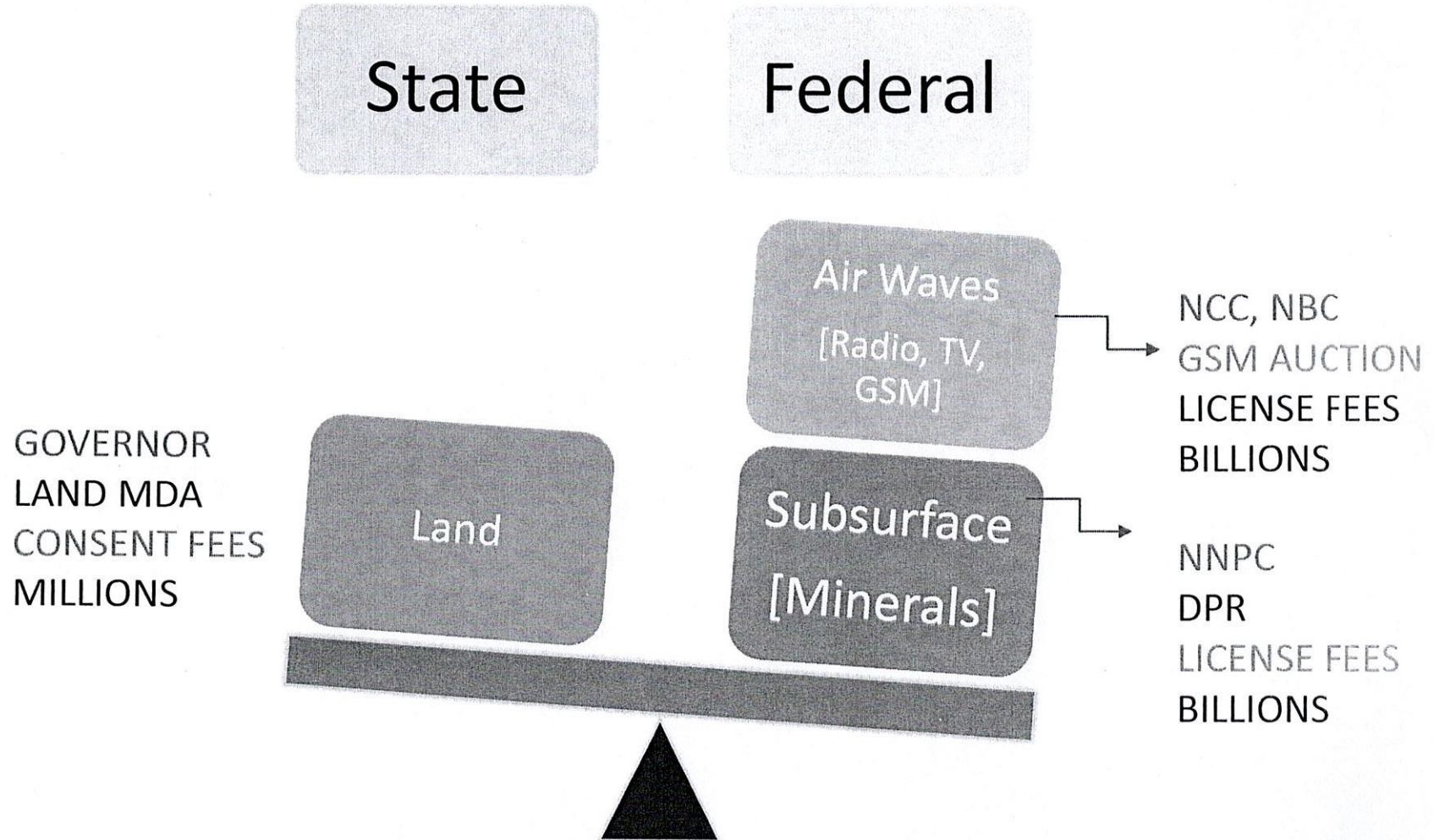
(b) the terms and conditions upon which special contracts may be made under section 8 of this Act;

(c) the grant of certificates of occupancy under section 9 of this Act;

(e) the method of assessment of compensation for the purposes of section 29 of this Act.

MANAGEMENT OF RESOURCES BY FGN & STATES [STATUS QUO]

Control & Management of Air, Land and Subsurface Resources— Current Status



PRELIMINARY REVIEW OF DRAFT LUA REGULATIONS

Part 1
Systematic Land Titling
& Registration

Part 1—

Systematic Land Titling & Registration

- LUA-Reg., Sec., 2(a)
 - Designation of SLTR area as a SLTR section should be exclusively left to the discretion of the Governor.
 - Since 1978, governor's have enjoyed wide discretion to designate an area as “urban area, under LUA §3.
 - The use of statewide [rather than nationwide] urban area designation has provided for flexibility has made each state to designate urban areas using statewide factors.
 - If LUAC consultation is not required for urban area designation under both LUA §3 & part 2 of draft regs, adding it to SLTR area designation would create unnecessary restraint on governor's discretion in this area.

Part 2

Designation of Urban Area

Part 2— Designation of Urban Area [i]

- 1) Section 3 of the Land Use Act confers on the Governor of a state the authority to designate any part of the state as “urban area.” However, it doesn’t provide criteria for such designation.
- 2) Part 2 of the proposed regulations attempts to specify the criteria for such designation and it includes population [not less than 20,000] and provision of infrastructure such as “asphalt-laden dual carriage ways, land registry etc.
- 3) Due to funding challenges, the required infrastructure and other criteria may not be present in areas which the Governor may wish to designate as urban areas.

Part 2—

Designation of Urban Area [ii]

- 4) The criteria can be divided into three categories— (1) **subjective** [minimum population, built-up town or city; industrial and economic presence ...]; (2) **capital intensive** [dedicated land registry, asphalt-laden dual carriage ways, general hospitals, High Court ...] and, (3) **objective** [state capital, LGA hqtr, High Court.
- 5) One option is to retain the status quo by NOT listing any criteria for exercise of the urban area designation power, leaving it to individual state governors to make the decision.
- 6) A middle ground is to limit the list of requirements for such designation such as local gov't & state hqtr any area with post-secondary institution ***BUT ADD the option*** for the Governor to designate other areas outside LGA & State headquarter.

Part 2, §27(2)— Effect of Urban Area Designation

- No cost may be charged for any conversion of existing interest in land to a Statutory Right of Occupancy and the issuance of a certificate for the designation of an area as an urban area.

Issues

- 1) This is contrary to LUA §9(2) & (3) which provides for C of O for fee as may be prescribed by the state;
- 2) *If states can not charge for issuance of SRO subsequent to urban area designation, would the FGN reimburse states for applicable processing fees? [unfunded federal mandate]; and,*
- 3) If indeed “control and management of land within a state” is conferred on the respective state governors, [LUA §2] **what section of the LUA empowers the FGN to waive fees and charges related to land titling and registration processing by the state gov’t using state personnel.**

Part 2, §27(2)— Conversion of CRO to SRO

- §28(1)(a) provides for mandatory [§28(4)] conversion of CRO of land for agricultural use in excess of 5,000 hectares to SRO; and,
- §28(1)(b) provides for mandatory [§28(4)] conversion of CRO of land for grazing in excess of 50,000 hectares to SRO.
- This is contrary to LUA §6(2) which limits single CRO to 500 hectares and 5,000 hectares for agricultural and grazing use respectively.
- This could lead to land grab activity starting at the LGA level [CRO] which would then be mainstreamed into SRO at the state level.

Part 3
Land Registries
[National Depository]

Part 3— Land Registries [National Depository] i

- Information is power, and the national depository proposed in the draft regulation would create “ a whole [national database] that is greater than the simple sum of its parts [individual state land records.”
- In an increasingly service oriented global economy, where access to information is valuable commodity for decision making for both the public and private sector, the national land records depository would make the FGN the *de facto* controller and manager of land across the nation, relegating the state to secondary status, contrary to the dictates of LUA §2.
- Furthermore, states would be constrained in monetizing web access to their respective land records to generate much needed IGR and recoup their investments [in technology and personnel] due to the comparative advantage of FGN robust nationwide database made possible by state funds.

Part 3—

Land Registries [National Depository] ii

- To avoid the potential negative impact of a national land depository on state interests in land management highlighted earlier, the following two options are proposed—

OPTION-A

- Delete all references to national land depository from the draft regulations.

OPTION-B

- All references in the draft regulations to national land depository which provide for wholesale transfer of all land records from the state registry to national depository should be amended to provide for transfer of **abstracts of land records**, such as total number of land titles **without individual names of land owners or specific location** [physical address] of property.

Part 3— Land Registries [National Depository] iii

- Relevant sections of the draft regulations which deal with national land depository include the following—
 - 1) §10(d)(ii)
 - 2) §30(3) [who would fund the electronic link of LGA depository to state depository and state to national depository or is this another unfunded federal mandate? Which section of the LUA provides for establishment of a national land depository?]
 - 3) §§ 31(b) & 40(1) [Who would fund the base map and ortho-referenced digital aerial photographs? Is this another unfunded federal mandate or would the cost be deducted at source from each state's revenue allocation?]

Part 3—

Land Registries [National Depository] iv

- 4) §§33(1) & 117(i) [Given the fact that software is at the heart of digitized operation, why should a governor need approval of the National Land Depository officials or yet-to-be established National Land Commission to select software for managing its state's land registry if indeed he is empowered under the principal law, LUA §2 to control and manage land within his state?]
- 5) §117(1) Is there a need for a National Land Commission to administer a resource that LUA expressly confers control and management of on the respective states? Wouldn't a dep't within Fed Min of H&UD be sufficient?
- 6) §§31(b) & 40(1) [*Who would fund the base map and ortho-referenced digital aerial photographs? Would the cost be deducted at source from each state's revenue allocation?*]

Part 9

Revocation & Gov't Acquisition

Part 9—

Revocation & Gov't Acquisition [i]

- 1) LUA §45 provides for delegation to the State Commissioner, not State Director of Lands, any or all of the powers conferred on the Governor.
- 2) Consistent with the above, all references to the “Director responsible for land matters in the State” should be reviewed to determine if it would amount to delegation of Governor’s powers contrary to §45.
- 3) This includes the following sections—
 - a) 103(2), [notice of revocation];
 - b) 105, [notice of acquisition]
- 4) Why is the Minister for land matters the designated official for issuing public notice of federal acquisition and not the Federal Director of Lands?

State Interest in its Territorial Integrity

Section 104(11)

“Where land within the boundaries of more than one State in any part of the Federation is the subject of violent dispute or conflict, the Federal government may require the land for public use and dedicate same as nature reserve.”

Issue

- Disputes are best resolved by the National Boundary Commission and the Courts;
- Potential for abuse through politically motivated interstate boundary disputes;
- What about compensation for the land owners;
- Convenient excuse for uncontrolled federal gov't land acquisition.

Impact of pre-Notice enumeration req't on State Land Acquisition Process

LUA

- §44 Notice to land owners by **Commissioner of Lands** (LUA §45) of requirement of land by the state for public purpose. [§28(2)(b), (3)(a);].
- Revocation of right of occupancy by the Governor; [§28(4)].
- Compensation to be determined by “appropriate officer of the state” [§29(4)(b) & (c)] **after notice**.
- Certificate of Title issued by the Governor. [§9(1)(a)].

LUA & PTCLR draft Regulations

- §44 Notice to land owners by **Director of Lands** (LUA REG, §103(2), 106(e); **LUA???**) of requirement of land by the state for public purpose. [§28(2)(b), (3)(a);].
- Notice to include compensation amount, LUA REG §106, **LUA?**;
- Revocation under [§28(4)].
- **Certificate of Title issued by the Governor.** [§9(1)(a)].

No pre-notice valuation req't for FGN Land Acquisition

LUA

- Notice to the state gov't of requirement of land by the FGN for public purpose. [§28(4)].
- Revocation of right of occupancy by the Governor; [§28(4)].
- Compensation to be determined by "appropriate officer of the state" [§29(4)(b) & (c)].
- Certificate of Title issued by the Governor. [§9(1)(a)].

LUA & PTCLR draft Regulations

- Notice to the state gov't of requirement of land by the FGN for public purpose. [§28(4)] & LUA Reg., [§104(1)].
- Revocation under [§28(4)].
- Issuance of Certificate of Revocation. LUA Reg., §(104)(6).[LUA ???]
- Valuation /Compensation to be determined by FGN [LUA Reg., [§104(5)]. contrary to [§29(4)(b) & (c)]
- Minister shall issue C of O, LUA₂₉ Reg., 104(9). LUA ???



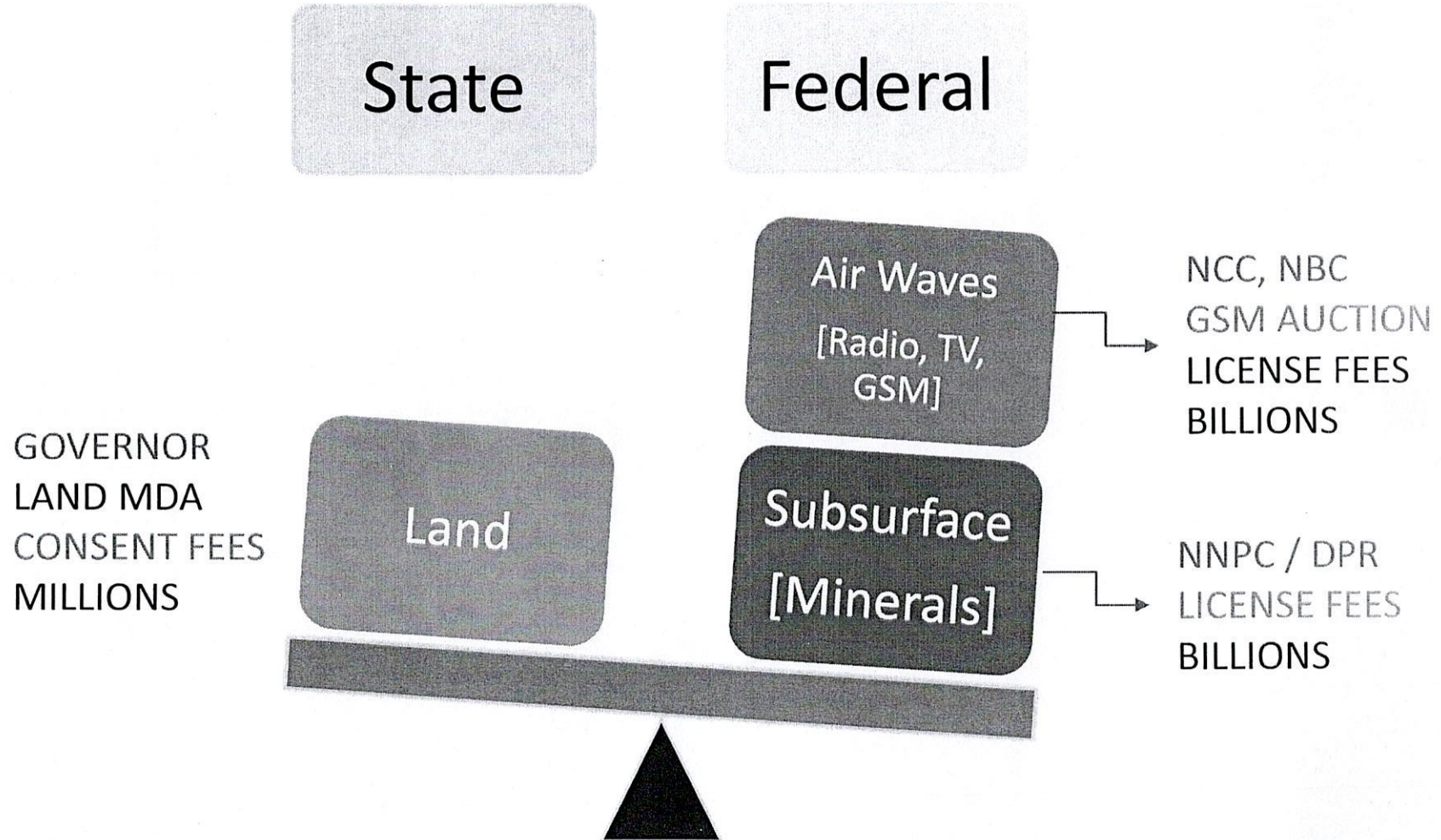
... Regulations or LUA clause

The issue of “Regulations or LUA” clause

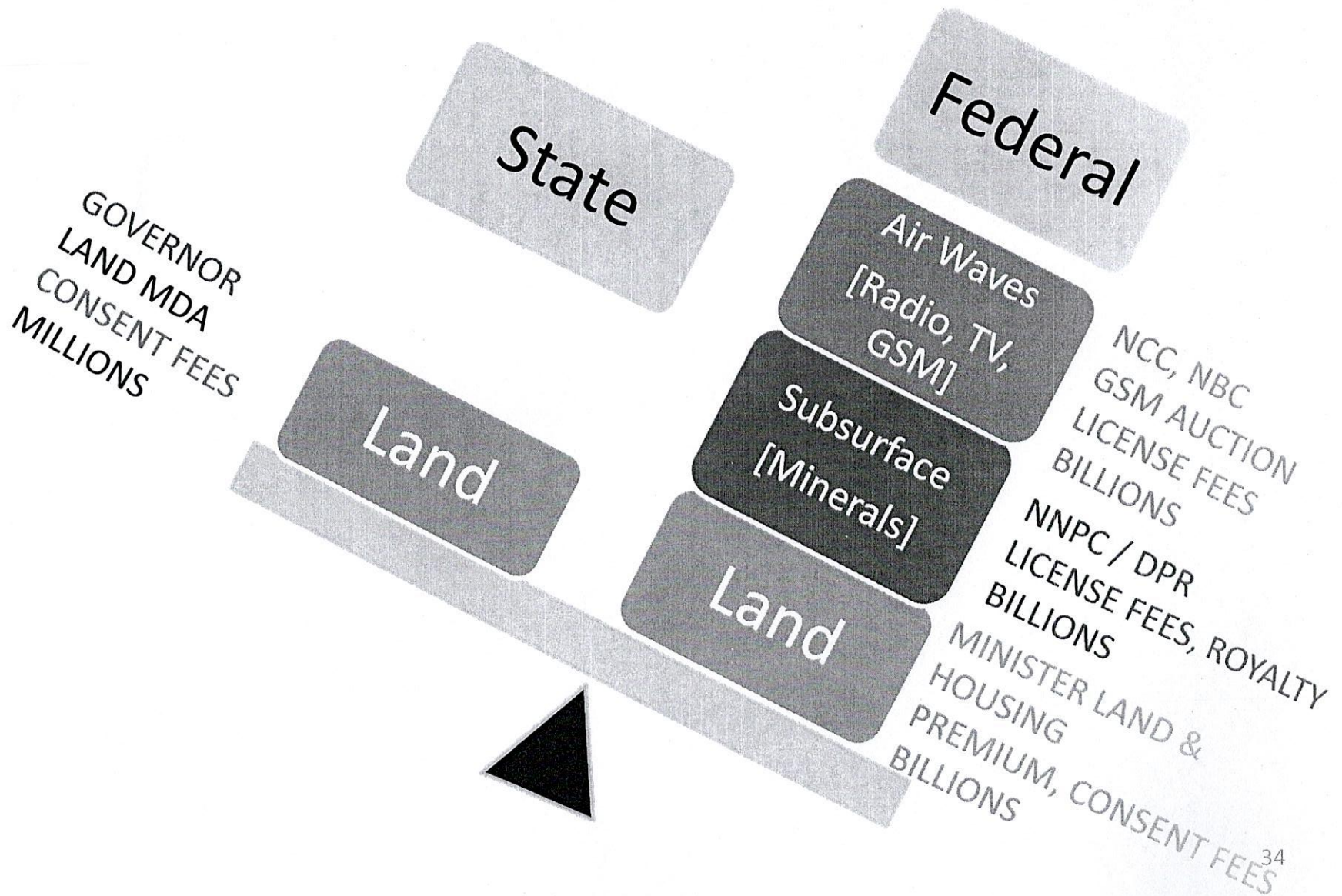
- 1) § 35(2) of draft regulations provides in part that “[t]he rights of a holder registered under this regulation shall not be defeated except as provided in these Regulations or the Land Use Act ...
- 2) To avoid the likelihood of equating the regulations with the LUA [the principal Act], there is need to review contextually each occurrence of the “Regulations or LUA” clause and determine whether it ought to be replaced by LUA.

Concluding Remarks
Land Resource Management—
Current & Proposed

Control & Management of Air, Land and Subsurface Resources— **Current Status**

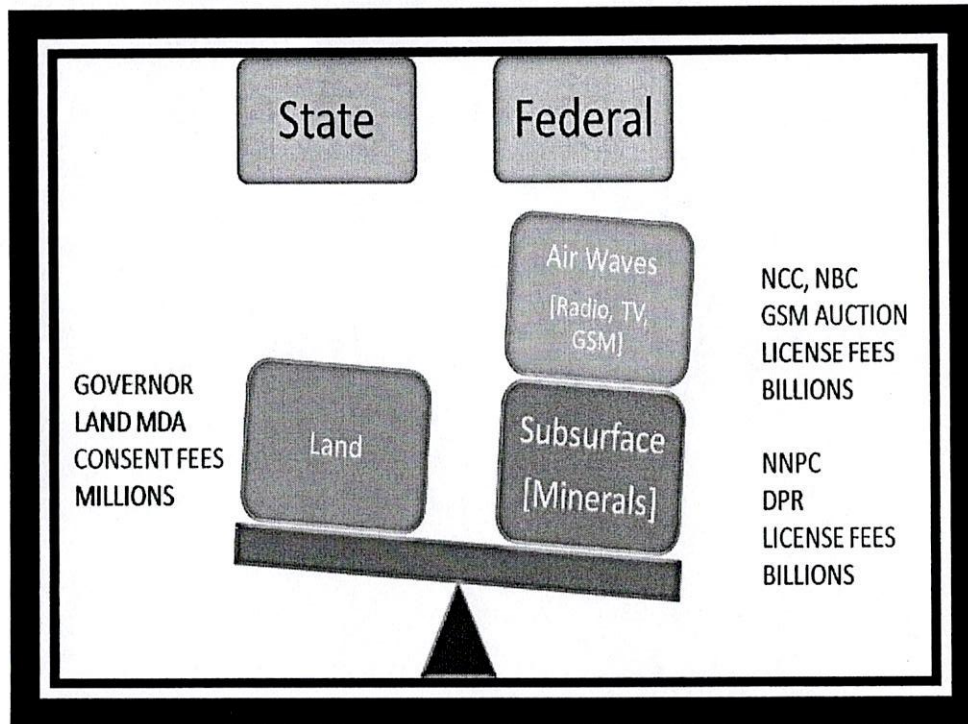


PTCLR draft LUA Regulations— Impact on Management of Land Resources

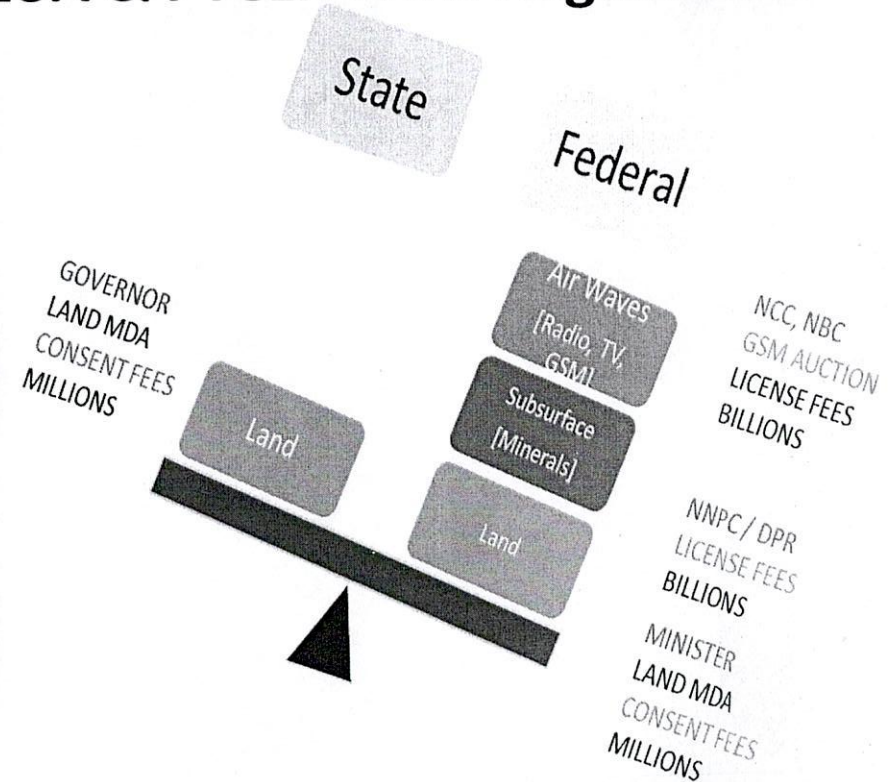


PTCLR draft Regulations— Impact on Management of Land Resources

Land Use Act



LUA & PTCLR draft Regulations



Thank you.

