

CRITICAL EXAMINATION OF LAND REFORMS IN NIGERIA: ISSUES, CHALLENGES AND SOLUTIONS

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Abstract

The life of man and that of the society revolve around land and its resources. Thus, it is apposite that man's fulfillment of his potentials in life depends largely on his relationship with land. The importance of land to human existence provoked intellectual excursion to the relationship between law and land making Land Use Act of 1978 a point of reference. The data for the article were gotten from secondary sources while doctrinal research methodology was adopted. The Study discovered that 1978 Land Use Act was the first of its kind because for the first time, it unified land administrative system in Nigeria under Government. The article concluded that the problems experienced in executing the present reform may be grouped under two broad heads, the problem that emanated from traditional land tenure system and the excursion of the Act itself. The article recommended that the Act should be removed from the Constitution so that amendments to it can be easily affected.

Keywords: Land administration, Land reforms, Land Use Act

1.0 INTRODUCTION

No doubt, land is the single most important natural resource in the sense that it affects every aspect of a people's live; their food, clothing, and shelter. It is the base for producing raw material for the

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manufacturing industry. It is very important resource. No nation -city or rural area can survive as an entity without it.

Thus, every person in a nation, the lawyer, the banker, the industrialist, the labourer, the educator, the student, the planner, the farmer had a serious stake in the country's land problems and it's proper utilisation. Omotola¹ Every person requires land for his support, preservation and self-actualization within the general ideals of the society. Land is the foundation of shelter, food and employment. Man lives on land during his life and upon his demise, his remains are kept in it permanently. Even where the remains are cremated, the ashes eventually settle on Land. It is therefore crucial to the existence of individual and the society. It is inseparable from the concept of the society. Man has been aptly described as a land animal.

From the forgoing, it is obvious that the life of man and that of the society revolve around land and its resources. This, it is apposite that man's fulfillment of his potentials in life depends largely on his relationship with land. Global recognition of the relevance of Land to the life of man can be gleaned from the proceedings at the United Nations Conference on Human Settlement (Habitat II)1996 where many countries committed themselves to promoting optimal use of productive and in urban and rural areas and protecting fragile ecosystems and environmentally vulnerable areas from the negative impacts of human settlements inter alia, through developing and supporting the implementation of improved land management practices that deal comprehensively with potentially competing land

¹ J.A. Omotola, Law and Land Right: Whither Nigeria, University of Lagos Akoka inaugural Lecture series 1988 page 6; See also Olagbaiye T. Statutory Regulation of the Environment – An appraisal of the Lagos State Environmental Sanitation Edict 1985 in Omotola J (ed.) Environmental Law in Nigeria including Compensation (Faculty of Law University of Lagos Akoka)

requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs. It is this importance of land to man and the society that influenced the state intrusion into property legislation in order to ensure adequate and efficient land management technique for the benefits of the greatest number of the members of the society.

This point is further emphasized in the words of a learned author to wit: Virtually every form of investment or development by government and private entities is dependent upon land in one way or another. It is now generally accepted that poor land administration can impede economic development and social welfare.

Therefore, no nation can fold its arms and allow its land use management to fall in disarray as "no nation handle the issue of land management within its borders with levity". It is this nexus between land and economic prosperity of an individual and a nation that probably informed the Constitutional provision respecting the inviolability of private property rights in various jurisdictions around the world.

In Nigeria, the provision of section 43 of the Constitution provides that no right or interest in movable or immovable property shall be compulsorily acquired anywhere in Nigeria without the payment of adequate compensation. Thus, while the Constitution recognizes the importance of land to personal economic growth by preserving individual property rights; it also recognizes the eminent domain status of the state to take private property upon the payment of adequate compensation to the victim. It is therefore imperative that the state should endeavour to strike an equitable balance between private property rights and state rights to compulsorily acquire private lands for public good. This balancing posture is to ensure that

land the scarce and limited resources of the nation is put to an optimal judicious use.

The Land Use Act, 1978² was enacted to address this importance of land to mankind and therefore provide viable management options to land administration in Nigeria. This salient fact is borne out of the preamble to the law, which provides that:

Whereas it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law and whereas it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable to provide for the substance of themselves and their families to be assured protected and preserved.

With the benefit of the foregoing paragraphs, the several reforms made are aimed at making usage and accessible better and easier, yet, there are series of questions related to land issues unanswered, this article therefore sets out to examine the provisions of the Land Use Reforms with particular reference to the issues arising, the challenges and the solution to the myriads of problems confronting the reform. This is particularly imperative given the disposition of the current government desire to reform the Land Use Act after more than 40 years of protection.

2.0 CONCEPTUAL CLARIFICATION AND LITERATURE REVIEW

Extant literature has expressed the concern of reknown scholars; Fabiyi³Famoriyo, Gandonu⁴ on the problems of traditional land

² Declaration of United Nations Conference on human settlements available at www.un.or/conference/habitat 17th April 2006

³ Y.L. Fabiyi, Land Administration in Nigeria; Case studies of Implementation of land Use Decree (Act) in Ogun Ondo and Oyo State of Nigeria". Agricultural Administration, 1974: p21-31.

⁴A.O. Famoriyo, Y.L. Fabiyi and A. Gandonu, Problems posed by land tenure in Nigerian Agriculture (NISER, University of Ibadan. 1977).

tenure system in Nigeria. The expression of the scholars with respect to the problems of land tenure could be interpreted based on the duplicity of ownership of land with consequent excessive transaction costs, fragmentation of land into uneconomic sized tracts, and inalienability of land which makes land part of the physical capital but not a part of financial capital. The need to ensure equitable access to productive opportunities on the land and security of such access once gained makes land reforms measures mandatory.

To aggravate the situation, wide scale speculative purchases of large tracts of (communal) land, in the absence of land taxes has reached a crescendo. Most the purchases are done by wealthy non farmers who held the land idle, waiting to capitalize on an appropriate market situation, while food production on the decline. Many governments development projects have been shifted by a prohibitive amount of compensation demanded by speculative purchasers who had previous knowledge of government intentions.

In other cases, disputed claims and counter claims over ownership of the proposed site and the attendant law suit coupled with court injunction which often prevent the development of Land subject to litigation make such land unavailable. All the above changes and inconveniencies have led to the questioning of the relevance of equity of traditional relationships and established institutions of land and have given moral sanction to demand for change.

The military Administration in its third National Development Plan 1975-1980⁵ commented on the problem posed by land acquisition for development projects thus "with regard to land acquisition for federal project, it is now clear that the burden is too great for any single ministry if it has to perform it's other function. Difficulties in land

Fabiyi, land Administration
Famoriyo, FabiyiaandGandonu, Problem posed by land.
⁵ Third National Development Plan 1975-1980

acquisition has been mentioned by virtually all public agencies as the most important single factor" which frustrated the implementation of a number of their project". On individual ownership of land and speculation in urban land, the military Administration said "furthermore individual ownership of land and speculation in urban land has led to considerable increase in the price of land. This trend has been accentuated by the application of the principle of equivalence in land valuation.

Moreover, fraudulent land transactions and endless legal tussle over title ownership have combined to stifle housing development with consequential and significant escalation in the price of rented accommodations". In the urban centres of the country, acquisition of Land for development projects and building purposes became virtually impossible for individual particularly the low and the middle-income groups and small business concerns because the price had become so prohibitive.

It was because of the problems highlighted above that led the Federal Military Government in April 1977 to set up the land Use panel. Brigadier Musa Yar-Adua, chief of staff, Supreme headquarters justified the inauguration of the panel thus "the need for establishment of this panel arose from the recommendation of various commission and panels set up to examine some aspects of the structure of our social and economic life. The problem has been foreseen and articulated in the third development program-me. Both the Anti-inflationary Task force and the rent panel reports identified land as one of the "major bottleneck to Development efforts in the country".⁶

3.0 TRENDS OF LAND REFORM IN NIGERIA

⁶ T.O. Odetola, "Socio-Economic Impact of the 1978 Land Use Decree" 1978, University of Ife.

Land reform itself is an aggregate of ideas and courses of action designed to change the institutional structure governing human's relationship with the land, involving intervention in the prevailing pattern of land ownership, control and usage in order to change the structure of holdings, improve land productivity and broaden the distribution of benefits.⁷

According to Olayiwola and Adeyele⁸ the need for land reform in Nigeria is underscored by the lingering problems of duplicity of ownership of land with consequent excessive transaction costs, as well as fragmentation of land into uneconomic sized tracts. The current agitation for the reform in Nigeria. Although it can be unmistakably understood that the previous constitutional reform exercises in Nigeria especially from Littleton, McPherson and onward substantially-welt on pure political motives that emphasized issues like independence, power sharing between tiers of government, regionalism, electoral misgivings, resource allocated, police control etc.

Before the advent of colonial system several areas of Nigeria's diverse peoples and cultures operated different forms of tenure system which centred on religious and customary system. Customary, traditional and communal land tenure systems associated with Africa rarely exist in idealised forms; rather, communal and individual rights intersect. Some of these indigenous land tenure systems are socially inclusive, environment and poor friendly.⁹

⁷ M.N. Uwakonye, "An Econometric Analysis of Two Possible Land Reform Strategies in Nigeria" in *Journal of Business and Economic Research*, volume 5, No. 3.2007, (March) pp.45-57

⁸ L.M. Olayiwola, and O. Adeyele, *Land Reform_ Experience from Nigeria*. Paper presented at 5th FIG Regional Conference on Promoting Land Administration and Good Governance, 2006 Accra, Ghana, March 8-11, 2006.

⁹ C.A.N. Ukaejiofo, *Land Titling and Registration as Necessary Factors in the National Land Reform Programme*" Paper presented at 39th Annual Conference of The Nigerian Institution of Estate Surveyors and Valuers, 21-26th April, 2009, Awaka, Anambra State

In the colonial period, the land laws include the 1902 Public Land and Native Right Ordinance of 1916. The colonial laws stripped all communities of ownership of their lands and vested it on the colonial government. Then come Land Tenure Law of 1962 and the Land Use Act of 1978, the former was codified under democratic dispensation while the latter was enacted by military government. But all these laws do not remarkably differ from the colonial laws in respect of centralisation of the control to the government (ibid 1987). The opinion was that all forms of Customary tenure systems were backward and not able to follow the demands of a fast-changing agricultural sector.¹⁰

After 30 Years enactment of the Land Use Act, Nigerian government is reconsidering the law that Olayiwola and Adeyele¹¹ say it's objectives have remained largely unfulfilled. Similarly, Ega¹² enlisted the defects of the 1978 Land Use Act to include the following:

- i. It neglects rural sector, communities and local laws and customs and holding system.
- ii. It disregards interest of small-scale farmers who are in majority and rural based.
- iii. It encourages land speculation and accumulation
- iv. It gives government much power to expropriate land, to pay compensation for only portion of the value of land and it centers around one person _ The State Governor.
- v. Corrupt public officers have in uncountable ways used abused their positions meted out injustice on compatriots over their land rights.

¹⁰ Ibid

¹¹ L.M. Olayiwola, and O. Adeyele, Land Reform_ Experience from Nigeria. Paper presented at 5th FIG Regional Conference on Promoting Land Administration and Good Governance, 2006 Accra, Ghana, March 8-11, 2006

¹² L.A. Ega "The Need to Redefine Rights under Customary Land Tenure In Northern Nigeria" 1984 In: Mortimore, M.; olofin, E. A.; Cline-Cole, E.A.; Abdulkadir, A. (eds.) Perspectives of Land Administration and Development in Northern Nigeria.

Other laws that prove to be either ineffective or inconsiderate of the environment include the Grazing Reserve Law of 195 and the Water Resources Decree of 1993. For the grazing law it failed to protect grazing lands in northern Nigeria which have now declined by 43.3%. for the water resources all interstate waters are put under the exclusive control of the Federal Government. But the Federal Government rarely pays attention to such interstate waters and how uses elsewhere cause problems somewhere. Other contemporary problems of land rights abuse in Nigeria include the Perennial cultivation of lands under large scale irrigation projects which deny pastoralists access to pasture grounds in the dry season.¹³

There is also obvious inequality in the way land allocation are made since the Land Use Act was enacted. Famariyo¹⁴ finds that in 1981 over 90% of land allocations in Kano State were made to public servants and businessmen, while agricultural sector received only 1.8% of the net land allocations. This situation persists sharply in more pathetic cases in Abuja, the Nigeria's new capital where the original land owners are being evicted and expelled by the government without due compensations (SERAC,3006). The powers given by the law to the State Governor to revoke rights of occupancy makes people to suffer in silence. However, the high-profile land policy deficit in Nigeria is presented in the ineffectiveness of legislations that secure ecological essence and fragility of the ecosystem and it's

¹³ S. Burchi, 'African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa', paper presented at International Workshop, 2005 Johannesburg, South Africa. Source:

<http://www.indigenouwater.org/user/Customary%20Water%20Rights%20%20Burchi.pdf>

¹⁴ O.A Famariyo, Acquisition of Land and Compensation in Nigeria." In: Mortimore, M; Olofin, E.A.; Cline-Cole, R A.; Abdulkadir, A. (eds.) Perspectives of Land Administration and Development in Northern Nigeria. 1987. Department of Geography, Bayero University, Kano pp. 114-119

sustainability. Chiroma et al¹⁵ reveal the lethal situation of the Hadejia- Jama'are and Komadugu- Yobe river basins. The authors attributed desiccation of the basins to dam constructions and excessive water exploitation for agricultural and municipal uses in Kano.

4.0 PRINCIPLES OF GOOD LAND GOVERNANCE

Good Governance in a society can only be achieved through a well-managed process. In a process where citizens participate in decision making, governments.

Become accountable to citizens and are obliged to observe the rule and laws. Such a process also means that government is well-managed and. Inclusive and delivers the desired outcomes¹⁶.

According to FAO¹⁷, good governance in land administration involves more participatory and transparent processes and aims to protect the property rights of individuals and enterprises based on a set of commonly held principles. The process of managing and executing land reform policies is land administration or land government. These principles can be made operational through equity, efficiency, transparency and accountability, public participation, and security, as defined below:

- i. Efficiency: Land registration should be simple, efficient, and effective. Formulated policies should also be implemented and delivered to society in a timely and efficient manner.
- ii. Equitability: Land administration services should not favor a particular group or individual, whether on the basis of gender, ethnicity, religion, age, or political affiliation.

¹⁵ M.J. Chiroma, Y D Kazaure, Y.B. Karaye, A.J. Gashua, Water Management Issues in the Hadejai-jama' are-komadugu-Yobe Basin: DFID-JWL and Stakeholders Experience in Information Sharing, Reaching Consensus and Physical Interventions 2005.

¹⁶ V. Doeveren, Rethinking good Governance: Identifying common principles. 2011. Public Integrity, 13(4) 301-317

¹⁷ Food and Agricultural Organization of the United Nations, "Good Governance in Land Tenure and Land Administration", 2007. Rome.

- iii. Accountability: Land administration agencies should prove their responsibility by responding to questioning and providing evidence of their actions and functions. They should be independently audited and regularly publish their accounts and performance indicators.
- iv. Transparency: Land information should be freely accessible, subject to the protection of privacy. It should be clearly stated which institution takes responsibility for land administration (in the national, regional, or Local-Government) and has the right to generate income from that land. Citizens should have the right to discuss and seek resolution to any objections that they raise about land use and land tax assessment.
- v. Public participation: Citizens should be enabled to participate in land-related policies either via elected politicians or civil society, without limitation on freedom of expression and association.
- vi. Security: Good governance in land administration requires a consistent and coherent legal framework, a fair and transparent judiciary, and general prevalence of the rule of law to protect property rights. Studies show that corruption and abuse of power challenge land tenure security, adversely affecting the confidence of the private sector in securing property rights, leading to underutilization of land.

Due to this, good governance in a LAS is essential for promoting economic development and ensuring good management through all levels of society¹⁸. How a LAS is governed influences how its benefits, cost, and risks are distributed.

¹⁸ UN_GGIM, “The Application of Geospatial Information – Land Administration and Management.” UN-GGIM Version 3.1. 2015. Available at <http://ggim.un.org/docs/meetings/GGIM5/land%20mngnt%20bkground%20paper%203.2%20final.pdf>

Land administration will also be successful if the services provided under the system are appropriate, accessible, predictable, and reliable.¹⁹ An effective LAS should also include capacity building, institutional development, and social interactions and focuses on users and not only on providers of land administration services. Some of the benefits of applying good governance in land administration²⁰ are:

- i. Economic growth and opportunity Introducing an easy customer-oriented land registration system improves the security of land rights, providing incentives for investment and development of financial markets.
- ii. Property managed state-owned land _Under good administration; state-owned lands are allocated transparently. Governments also have accurate records and clear policy objectives for state land management, whereby citizens have equal land use rights, customary rights, or resources rights.
- iii. Property taxation and land valuation_Property taxes are an important source of income for local governments. Having a transparent and accountable system in the use of such taxes allows the state to benefit from land taxation and prepare better land use plans.
- iv. Land Use planning_Effective land use planning policies and procedures are critical determinants of the value of land. In the case of agricultural development, transparent state land management helps protect the environment from inappropriate conversion of agricultural land for urban use. Land administration is the " process of determining, recording, and disseminating information about the tenure, value and use of land when implementing land management policies." Thus, a LAS can support

¹⁹ T. Hilhorst, Local governance institutions for sustainable natural resource management in Mali, Burkina Faso and Niger." KIT Working Paper Series. 2018, WPS.GI, Amsterdam, the Netherlands

²⁰ Food and Agricultural Organization of the United Nations, "Good governance in Land Tenure and Land Administration", 200. Rome.

sustainable development through implementation of land policies and land management strategies.²¹

As defined by Enemark²², the four land administration functions are:

- a) Land tenure: The process of allocating and securing land; cadastral mapping and determining boundaries of parcels; the transfer of property or use from one party to another through sale, lease, or credit; security; and management and adjudication of doubts and disputes regarding land rights and boundaries.
- b) Land Valuation: The process related to assessment of land value; calculation and collection of revenues through taxation; and adjudication of land valuation and taxation disputes.
- c) Land Use__Control of land use through the adoption of planning policies and land use regulations at national, regional, and local levels; the enforcement of land use regulations; and the management and adjudication of land use conflicts.
- d) Land development: The processes and institutions related to building new Physical infrastructure and utilities; the implementation of construction planning, public acquisition of land, change of land use through granting of construction permissions and building land use permits; and the distribution of development costs

5.0 CONCLUSION

²¹ UN-GGIM, "The Application of Geospatial Information _ Land Administration and Management." UN-GGIM Version 3.1.2015. Available at <https://ggim.un.org/docs/meetings/GGIM5/land%20admin%20mngnt%20bkground%20paper%203.2%20final.pdf>

²² S.Enemark, "Land Administration System, managing right, restrictions and responsible in land." Map World Forum, Hyderabad, India, February 10-13,2009. <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.483.9398&rep=rep1type=pdf>

Governance in land administration can lead to proper, effective, and efficient land administration and strengthen the protection of individuals' and enterprises' property rights. However, the state might be influenced by particular groups who unfairly use power and subvert the LAS. The LAS may also be weakened through insufficient capacity to effectively carry out its mandated functions. The paper recommends that the LAS should be removed from the Constitution so that amendments to it can be easily affected. This is to avoid the bottlenecks between land tenure system and the application of Land Use Act.