

Land Reform – Experience from Nigeria

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Key words: Land, land tenure, cadastral survey, Land use zoning.

SUMMARY

In Africa, land tenure system has generally been broadly described as rigid, creating obstacles in the way of development. Solutions to the land tenure system have involved the adoptions of some institutional changes such as the promulgation of legislation or the adoption of some revolutionary principles. In Nigeria, the intervention into the land problem involves the promulgation of the 1978 Land Use Act.

This paper examines the Nigerian experience on the land reform issue. It highlights the nature and dimension of Nigeria's land tenure problems before the 1978 land reform. The scope and content of the land reform act are identified. The problems and limitations of the land reform act are examined. Finally, solution to solving the land holding problems in Nigeria are presented.

SOMMAIRE

En Afrique, le système de tenure de terre globalement a été généralement décrit comme rigide, créant des obstacles dans la façon de développement. Solutions au système de tenure de terre ont impliqué l'adoption de quelques changements institutionnels tels la promulgation des législations ou l'adoption de quelques principes révolutionnaires. Au Nigéria, l'intervention dans le problème de terre implique le promulgation de l'Acte d'Usage de Terre de 1978. Cet article tente a examiner l'expérience de Nigéria sur le problème de réforme de terre. Il souligne la nature et la dimension de problèmes de tenure de terre au Nigeria avant réforme de terre de 1978. L'étendue et le contenu d'acte de réforme de terre sont identifiés. Les problèmes et les limitations de l'acte de réforme sont examinés. Finalement, les solutions à résoudre des problèmes de tenure de terre au Nigéria sont presente.

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1. INTRODUCTION

Land is perhaps the single most important natural resource in the sense that it affects every aspect of a people's life; their food, clothing, and shelter. It is the base for producing raw material for the manufacturing industry. It is an important resource. No nation-city or rural area can survive as an entity without it. Thus, every person in a nation – the banker, the industrialist, the labourer, the educator, the student, the planner, the farmer- has a vital stake in the country's land problems and its proper utilization (Acquaye, 1976).

A careful and detailed analysis of what role land has played in the lives of the people and more importantly how the system of land tenure has evolved has affected the lives, beliefs and general disposition of the people who live on the land and thus revealed some fundamental attitudes. Thus, the attachment of peasant to their land is not just a mythical one. It is a value that has developed over centuries of uninterrupted dependence upon the land they have come to recognize as their sole means of livelihood.

The typical villager recognizes land in its entirety. To him, land is a home and workplace. He shares it with the entire biotic complex. He has learned through experience the futility of expecting or attempting to draw more from the land than he puts into it, hence he practices rotational (shifting) cultivation. In his wisdom, he develops respect for nature and treads humbly on the land. He understands only too well, contrary to the belief of urban speculators that he belongs to the land, not the land to him. At death, he rests in literal peace inside the land (earth) which has nourished him all the days of his life.

The urbanite, on the other hand, expresses predominantly materialistic values. To him, city land is simply a commodity to be grabbed, invaded, bought, sold and even stolen. The land is to be "owned" as a symbol of wealth, power and prestige.

Land serves as a social security function to most people because after all else have failed they could still return to their villages to stake a claim on a portion of the family land and raise crops on this for subsistence. A land ownership and use policy must recognize the fact that the very existence of some people rests on their having access to a piece of land and any attempt to wrest this from them would be strongly resisted. It is in this light that attempt is made to examine Nigerian experience on the land tenure and the land reform issues.

2. THE NATURE AND DIMENSION OF NIGERIA'S LAND TENURE PROBLEMS BEFORE 1978

Extant literature has expressed the concern of reknown scholars (Fabiya 1974, Famoriyo 1977, Gandonu 1977, Okpala 1980) on the problems of traditional land 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 reform measures mandatory. To exacerbate the situation, wide scale speculative purchases of large tracts of (communal) land, in the absence of land taxes has reached a crescendo. Most of the purchases are done by wealthy non-farmers who held the land idle, waiting to capitalize on an appropriate market situation, while food production is on the decline (Fabiya, 1974).

Many government development projects have been shifted by a prohibitive amount of compensation demanded by speculative purchasers who had previous knowledge of government intentions (Famoriyo, Fabiya and Gandonu, 1977). In other instances, 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 1975-1980 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 its other functions. Difficulties in land acquisition had 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 accommodation".

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 commissions 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 programme. Both the Anti-Inflationary Task force and the rent panel reports identified land as one of the “major bottlenecks to development efforts in the country”.

3. THE SCOPE AND CONTENT OF THE LAND REFORM ACT

According to Omotola, (1980) there are four basic objectives that warranted the enactment of the Land Use Act, that is, the Land Reform Act. The objectives of the act are referred to as the rationale for the formulation and enactment of the land use decree and they are as follows:

- To remove bitter controversies resulting at times in loss of lives which land is known to be generating.
- To streamline and simplify the management and ownership of land in the country.
- To assist the citizenry, irrespective of his social status, to realize his ambition and aspiration of owning a house.
- To enable government to bring in control the use to which land can be put in all parts of the country and facilitate planning and zoning programmes for a particular use.

The Federal Military Government of Nigeria issued a land use act (No 6) of March, 1978, which purports to take over the ownership and control of land in the country thereby providing a uniform legal basis for a comprehensive national land tenure system. Hitherto, the land tenure systems in the northern and southern parts of the country had been different. The act embodies procedure for the transition from customary to state sanctioned tenure of land by substituting the authorities of the several (36) states for the traditional owners or local chieftains in the sectioning of the working rules regarding the use, occupancy, and transfer of land. Article 1 of the Act states that “all lands comprised in the territory of each state in the federation are hereby vested in the military governor of the state”.

The act has been designed to deal with several problems encounter by the various operative on land since colonial times. It addressed four important issues arising from the former tenure systems; the problem of lack of uniformity in the laws governing land use and ownership; the uncontrolled speculation in urban land; the problems of access to land right on equal basis; and fragmentation of rural land arising from the allocation of the traditional principles of inheritance. It approaches these issues through three strategies: the investment of proprietary rights in land in the state; the granting of users rights to individuals; and the use of administrative system rather than the market in the allocation of rights in land (Uchendu, 1979). Thus, the avowed purposes of the land reform act are:

- to make investment in agriculture attractive by removing the uncertainty in the control over land;
- to curb speculation in urban lands;

- to make opportunities to occupy land generally available to all Nigerians throughout the country thereby bringing about mobility of resources, especially, human resources; and
- To reallocate rural land to large scale farmers to facilitate large scale farming (Parson, 1982).

The act emphasizes the public purposes of protecting the rights of all Nigerians to the land of Nigeria. The preamble to the Act states “whereas it is in the public interest that the right 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 them to provide for the sustenance of themselves and their families should be assured, protected and preserved”.

The responsibility of implementing the act has passed to individual states and their constituent units of the local government. The act provides for the establishment in each state of a “land use allocation committee” to advise the governor and to have jurisdiction in disputes over any compensation that may arise. Similarly, provision is made for a “land allocation advisory committee” to advise each unit of local government regarding the issuing of customary certificate of occupancy to applicants for rural lands.

One of the innovation in the land reform act is the vesting, in the local government, of the authority to issue certificate of customary right of occupancy. This authority would seem to supersede and absorb (at least formally) the traditional authority of local chiefs to allocate opportunities to members of the community for the use and occupancy of land. However, the act reduced all land users to lease holders by converting landowners to landholders, thereby super imposing the authority of the state on all tracts of land (Parsons 1982).

The land use act differentiated, rather arbitrarily the Nigerian land into rural and urban lands with somewhat different politics:

- Urban land Policy: prior to the promulgation of land use act the pervasive problem in most urban areas of the country are; speculations in urban lands and inability of migrants to cities to secure housing. The urban land speculators accumulate large tracts of land which are held undeveloped in anticipation of a risen site value in the absence of land taxation. The act intends to combat the two problems by limiting private ownership rights in urban land by providing that an individual may hold not more than 0.5ha of undeveloped land. Undeveloped lands held in excess of 0.5ha are to be surrendered to government. Holders of conveyance or fees simple title to urban properties are to convert same to statutory certificates of occupancy. This implies that the holders of such certificates (rights) have been converted to lease holders for a term of years and as state tenants are to obligated to pay rent to the state.
- Rural land Policy: Land for agricultural purposes and (except those in which minerals have been discovered or exploited) is to be under the jurisdiction of local governments. Local governments are to issues customary certificates of occupancy rights. According to the Act, the local governments are empowered to grant customary rights of occupancy to any persons or organization for the use of land for agricultural, residential, or other purposes. Furthermore, they are authorized to grant customary occupancy rights in such

rural lands in amount up to 500 hectares for agricultural purposes or 5,000 hectares for grazing purposes (section 6(2)). And these ceilings may be exceeded by concert of the military governor.

The logic of the provisions are such that rural people would now stand a new status of liberty-explosive to the state – they are exposed to liberty or capacity for freedom of choice, of local or state authorities to restrict the grants or assign them to strangers, (Parson 1982).

4. PROBLEMS AND LIMITATIONS OF THE LAND REFORM ACT (1978 LAND USE ACT)

The objectives of the land use act have remained largely unfulfilled 27 years after its enactment and title to land appears to be more insecure now than it ever was. The deficiencies of the land use act were aptly summarized by Mr. Justice Augustine Nnamani who as Attorney – General was responsible for drafting of the act and its incorporation into constitution. He said “in the course of these years, it has become clear that due to its implementation not its structure or intendment, the objectives for which the land use act was promulgated have largely remained unfulfilled; indeed, they have been distorted, abused and seriously undermined. The lofty hope in the second stanza of the preamble – 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 the sustenance of themselves and their families be assured, protected and preserved or in section 1 “that all land be held in trust and administered for the use and common benefit of all Nigerians” – has been nothing but a forlorn hope, a pipe dream. The limit of the land allowed by section 34 (5) and 96) of the act has been totally ignored. The position today is that land is less available to the ordinary Nigerian that it was pre the land use Act thus holding most of the citizens to inevitable state of perpetual tenants.

The allocations policy of various governments particularly during the civilian era has been scandalous. The land use and allocation committees which are no more than appendages of the governors and merely endorsed lists approved by them. The civilian governor, who has vowed to repeal the act before entering into office, grabbed it with both hands on getting into power. The result to be expected were allocations of land mostly to friends, relatives and party faithful; land become indeed an item of patronage. Worst still the patronage was withdrawn as one government succeeded the other.

Allocation of land by the previous administration tended to the revoked with attendant dislocation of the social and economic life of the community. Allocation of land was hardly made to the low income earners. No government has yet earmarked a percentage of land available for allocation to this category of Nigerians as a deliberate policy. Nor has there been allocation of a percentage of land available for allocation to the community or family that previously owned the land now acquired by government. The combination of factors arising from zeal attending the generating of internal revenue by state government has put land beyond the reach of ordinary Nigerian, and indeed very soon all Nigerians. A policy which expects all applicants to pay a non refundable fee of N50 or more then does not reckon with the minimum wage earned by millions of Nigerians; the ground rent charged for allocated

land is made indeed beyond the reach of most Nigerians excepts perhaps the commission agents and a few genuinely affluent citizens. Aspects of the act which in implementation have brought untold hardship include the provisions relating to issues of certificate of occupancy and grant of consent to alienate. Both can take years and the applicant is subjected to the vagaries of bureaucratic action with demand for survey plans interminable fees, documents and a lot of to and froing. These cumbersome procedures have adversely affected economic and business activity and made industrial take-off a matter very much in the future’.

No separate administrative structures was set up for the implementation of the act in most states of the country. The implementation of the act posed almost intractable problems (Fabiya and Adesimi, 1979). The problems mainly concern the following:

- The definition of improvement – there is unambiguous definition of what constitute improvements or unexhausted improvements.
- The methods of assessing compensation for buildings or farm structures and crops; market value is the basis of valuation of improvement for the purpose of compensation however, market value is the basis of valuation for non-income producing assets such as religious centres, while the problem of valuation of farmland is especially compounded by lack of information on sales of farmlands since such are always treated with secrecy.
- Finding a replacement for acquired agricultural land is extremely difficult because there is no land in Nigeria without an owner (Potential or actual)
- The payment of compensation has always been untimely; the payment of compensation is to assure no loss of welfare by those disposed of their properties, thereby enabling society to maintain pareto’s optimum position in which nobody is made “worse-off” while making some better off. (Fabiya, Adegboye and Folayan, 1981). The general principle is that fair market value for the property taken will make the owner “whole” that is it will enable him to replace what has been taken from him (Linchfield, 1956). However it seems that no amount of compensation can assuage the feelings of an average Nigerian to whom land has profound cultural and social-political values and spiritual aspects. To the subsistence farmer, land is the basis of his survival; it is to him life given. Thus to take land away from him for a public purpose, with which he cannot identify, without prompt payment of adequate compensation or resettlement, is to ask for trouble.
- The shortage of funds is another major problem as there is general problem of cash flow in the economy.
- There remains the human problem of dishonesty among officials and general public. For example, many of the declarations made by applicants were found to be false (Fabiya, 1983).

In summary, the Land Use Act has been found to have the following problems:

- It is essentially an urban legislation which only superficially touches the tenure problems in the rural sector. Besides, the title is a misnomer; it should have appropriately been titled “Land Allocation Act” If it were a Land Use Act, the concept zoning should have been included.
- It has not eliminated speculation in land; it has only driven it underground or fueled it.
- It concentrates both economic and political powers in the hands of governor’s military elites and “robber barons” who use it to dispossess their political opponents and or peasant

farmers through large-scale acquisition of land for commercial agriculture, paying only for unexhausted improvement, stipulated by the Act.

- It has not succeeded in removing the uncertainties in title to land; instead, it seems to accentuate it. For example, a certificate of occupancy can be revoked for “public purpose” or a contravention of the Act. Where a bank gave out loan to a prospective farmers and accepted as certificate of occupancy of pieces of land as collateral, it is not certain who will get paid compensation, the bank or the landholder?
- The Act does not appear acceptable to a cross-section of Nigerians; the traditional rulers, lawyers and estate surveyors oppose it while peasant farmers who have birthright claim to the land ignore it.
- It introduces some uncertainties as to who can register rural land, whether the initial “landowner” who granted it to a tenant or the tenant or sub0tenants as stipulated in section 36(2).
- The requirement in section 21, 22,23 and 34 (7) for consent by the governor for statutory right of occupancy or local government for customary rights of occupancy must be first had and obtained before any transfer of right over land can be affected is cumbersome, vexatious and capable of stifling initiatives.
- The civilian government of 1979-83 ignored it and even dissolved all committee set up to implement the Act.
- It is axiomatic that the government continue to appeal to various communities to donate land for development purposes despite the fact that the government arrogated ownership and control of all land in the country to itself.
- Several years of unsustainable exploitation of oil has devastated the local environment, thereby depriving the people of Niger Delta, of the optimum use of their land and water; yet all these are not counted in the assessment of damages due to the victims under the Land Use Act.
- Protest over the injustice of the Land Use Act by the Niger Delta people had been met with gross violation of human rights by the government. Several lives have been lost in clashes between protesters and government security agencies.

5. SOLUTIONS

The major success of the Act is that it has provided a uniform land tenure for the entire country. In order to consolidate this gain and to make the operation and implementation of the Act achieve the objectives for which it was promulgated the following amendments are suggested:

- The Act should be removed from the constitution so that amendments to it can be effected. Since the Act is subject to the cumbersome provision of amending the constitution under section 5 of the constitution, no meaningful amendment can be carried out to it in a civilian democracy. Because the Act has become an incident of political power, the threat of abrogation which necessitated its entrenchment in 1979 is no longer present.
- The land use and allocation committees had been rendered impotent and their functions taken over by the governors. Each committee should be constituted into an independent commission with safeguards for the independence and tenure of office of its members.

- Title to land has become very precarious because of the misuse and abuse of section 28 of the Act. For instance, the commercial banks are uncertain as to the value of certificate of occupancy which they are being asked to take as security for loans bearing in mind that these certificates can be revoked at the whims and caprices of governors. Section 28 should be amended to make it obligatory for the governor to act on advice of the commission in II above.
- Land use Zoning concept should be entrenched in the Act whereby good agricultural land should be protected. The rate of conversion of prime agricultural land to non-agricultural land use is very alarming and this should be checked through zoning ordinances and restrictive covenants.
- Introduction of cadastral survey. This will enable us to know the extent of the land each community, family, individual or any other land owning unit. It recognized that cadastral survey is expensive; determination of ownership is messy and time-consuming. But it is high time the country took an inventory of her resources, both human and material. After it has been determined, who owns which piece of land; it is then necessary to document ownership through title registration.
- Protection of the interest of small scale farmers; provision should be made to protect the small-scale farmers from being displaced by imposing a maximum size of holding permissible by any individual farmer. The unbridled acquisition of tracts of land for commercial agriculture by individual and corporate bodies under the provisions of the Land Use act can easily result in concentration of land in few hands.
- Property taxation; investigations reveal that several people have been buying up tracts of rural land for speculative purposes in the absence of property rating in the form of land taxes (Fabiya, 1974). Tenement ratings should be intensified in the urban centres where it already exists and introduced all over the country as a means of generating revenue for the government. The introduction of land taxation is likely to force the people to use their land more intensively to pay taxes, reduce the price of land due to capitalization effect or force people to dispose off their land as a result of holding cost effect of tax on the landowners, depending on the location of the land and their expectation of future prices. However, taxation of land has the effect of raising revenue for the government.

6. SUMMARY AND CONCLUSIONS

It has been shown that traditional tenure system placed major constraints upon the achievement of efficient agricultural production and physical development which led to Land Use Act – promulgation by the government in 1978.

The Land Use Act promulgation by the Government 27 years ago failed to take into sufficient consideration the modifications that have taken place in the traditional tenure system by treating land as a free good. The Act concentrates both economic and political powers in the hands of few individuals who are abusing its spirit. It has been shown that the Act does not enjoy wide acceptance and the implementation leaves much to be desired. Sale of land, forbidden by the Act, has been continuing unremitted. The people simply backdate the receipt of the sale. It has not eliminated speculation in land; it has only driven it underground or fueled it. It is essentially an urban legislation which only superficially touches the tenure

problems in the rural sector and it has not succeeded in removing the uncertainties in title to land among other defects.

A number of alternative land policy measures ranging from cadastral survey, land use zoning concept, removal of the Act from the constitution to land taxation have been suggested.

The machinery for land administration at present is considered inefficient; there is need for a thorough examination of the functions, organization and effectiveness of the ministries and other government agencies dealing with land matters.

REFERENCES

- Solomon, A.O. (1991): Title to land in Nigeria; An inaugural Lecture delivered at Obafemi Awolowo University, Ile-Ife, On June 1991.
- Osei-Bonsu. S.N. (1983): Alternative Approaches and strategies to Rural Development Studies Vol. 3 Nos. 1 page 31-32.
- Kaniye, S.A. Ebeku, (2001): Oil and the Niger Delta People: The Injustice of the Land Use Act; The centre for Energy, Petroleum and Mineral Law and Policy.
- A.A.O. Okunniya, the Land Use Decree and Private ownership of Land in the Proceedings of the 17th Annual Conference of the Nigerian Association of Law Teachers Page 228.
- The report of the committee to consider the Registration of title to land in Western Nigeria, Sectional paper 2 of 1962 para 27.
- Alienation of family property in southern Nigeria (1966 P & D.
- Third National Development Plan 1975-80 Vol. Page 398.
- Federal Government of Nigeria Land Use Decree No. 6, 1978.
- Famoriyo, A.O., Y.L. Fabiyi and A. Gandonu, (1977): Problems posed by land tenure in Nigerian Agriculture NISER, University of Ibadan 2000 Pages.
- Odetola, T.O. (1978): "Socio-Economic Impact of the 1978 Land Use Decree" Adejuyigbe and Dare (eds.) Land Tenure in Nigeria Implications and Implementation of the Land Use Decree 1978. Published by the University of Ife, Ile-Ife.
- Ratcliff, Richard U. 91949): Urban Land Economic New York: McGraw-Hill Book Company Inc.
- Fabiyi, Y.L. 91984): Land Administration in Nigeria; Case studies of Implementation of land Use Decree (Act) in Ogun Ondo and Oyo State of Nigeria". Agricultural Administration 17(1): 21-31.

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