

LAND REFORM IN NIGERIA: STATUS AND CHALLENGES

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Abstract

Land is important in the economic life of any nation. It is everywhere as it is said to be a "free gift" of nature but it is not as available as it is often said to be free. Land and the institutions that govern its ownership and use greatly affect economic growth and poverty reduction. Lack of access to land and inefficient or corrupt systems of land administration have a negative impact on a country's investment climate. Access to even small plots of land to grow crops can also greatly improve food security and quality. It is this reason that most governments embark on land reform measures which is germane to the Nigerian economy today. This is the main thrust of this paper-

Introduction

As soon as His Excellency, Alhaji Umaru Yar'Adua (G.C.O.N.) - commenced his assignment as the leader of the Nigerian state, he reeled out his 7-point agenda, which guides his administration's service delivery to Nigerians. This agenda includes, among others, Land reforms, food security, qualitative and functional education, transportation, infrastructural development, power and energy as well as security. These reforms are interdependent in their direct or indirect dependence on land; hence land reform shall as a matter of fact enable (the achievement of) the others.

The geography dictionary defines "Land Reform" as a sweeping change in land tenure. It usually involves the breaking -up of large estates and the widespread redistribution of the land into small holdings but may also be land consolidation.

Britannica Concise Encyclopedia looks at Land Reform as a deliberate change in the way Agricultural Land is held or owned, the method of its cultivation, or the relation of agriculture to the rest of the economy.

"The common characteristics of all Land Reforms are; modification or replacement of existing institutional arrangements governing possession and use of land" (Wikipedia) "A better approach is to regard Land Reform as any program, which either redefines or redistributes rights in land" (Mbadiwe, 1999:pp.80).

Some factors are responsible for why most governments choose to embark on land reform. Such factors include but not restricted to; Food insecurity and rural poverty problems in a country, income disparity between land owners and land users, impact of colonization on the aborigines of a country, the strong weight of traditional land tenure system against accessibility to land, Philosophical or religious arguments and the right to dignity, or a simple belief that justice requires a policy of land to the tiller,

Customary land rights which offer access to land and security of tenure to many poor households. However, because they provide limited access to formal credit and input markets and sales outside the group, opportunities for productive exchange and access to credit are limited. (Kagwanja, 2008).

Land Reform measures could take the form of Land -Value-Taxation (wiktionary defines this form of tax as an ad- valorem type where only the value of land itself is taxed ignoring buildings, improvements and personal property. It is also called site value tax), tenancy reform, individualization, consolidation, registration, collectivization and land rights or property rights redistribution (Mbadiwe, 1998:94-98).

Lack of experience and competence of those receiving land to use it productively, issues of equity as they concern displacing persons who have sometimes worked hard in previous farming on the land, lack of competence of governmental entities to make decisions regarding agricultural productivity, absence of motivation of any property-owner to invest in land that ultimately can be seized and the possibility of plunging a country in vast legal disputes from arbitrary property distribution are criticisms made against land reform policies in Africa by some scholars. Other scholars see land reform in Africa as a means of perpetrating injustice, thievery and undue use of force on people (Wikipedia).

The Proprietary Land Structure in Nigeria

Three periods are noted in the land history of Nigeria- The Pre-colonial, Colonial and Post-colonial periods. Before the coming of the British to Nigeria, Nigerians had their system of Land Ownership/Holding. This was the Land Tenure System of the people which varied, though, from region to region, tribe to tribe and community to community. Hence, while some Nigerian tribes had very strong communal influence on land, others had stronger individual influence whereas others operated feudal system, with the King in charge of all the land belonging to his kingdom. Precisely, the Northern region of the country witnessed strong feudal Land Holding System as against the Southern region characterized by individual and communal land holding system (KaJu, 2001; Nwanekezie, 1996; Anya, 2001). Traditionally, the Land Tenure Law of the then Northern States was akin to that of the south. Two events however altered the system. These events were the Islamization of Northern Nigeria and the British Colonization (Ogu, 2000). Anya (2001) corroborates this view in this statement; "before the advent of Whiteman, Nigerians were still not quite civilized. The method of farming was crude, animal husbandry was not well developed and land was in most cases, communally owned. Members of each community received a portion of the communal land for farming and everyone was free to hunt anywhere. Private land ownership was unknown. Land was acquired or lost through wars or by exchange between neighbouring communities".

The system changed with the coming of the British. They introduced Freehold and other types of interests in land. They enshrined monetary transactions in the "land market" and indeed engendered the development of the Real Estate Market in Nigeria. During the Colonial era, laws like "the Land and Native Rights Proclamation of 1910," "the Public lands acquisition ordinance of 1917," were among the legal instruments used in land administration of Nigeria.

Considering some major problems faced by Post-colonial governments in managing land of varied interests, some major "land reforms" were inexcusable in Post-colonial Nigeria. Hence, in 1962, the land tenure law of Northern Nigeria was introduced and in 1976, the Public Lands Acquisition Decree of 1976 came to force. These (aid the foundation and the roadmap towards achieving a more acceptable Land Ordinance in the country. In 1978, therefore, the Gen. Obasanjo (as he then was)-led federal government constituted an 11-man committee to tinker a legal framework for the Ownership and Management of land in Nigeria. This panel/committee was specifically detailed, among other things, to "examine the feasibility of a uniform land policy for the entire country, make necessary recommendations and propose guidelines for implementation" (Ogu, 2000). The outcome of the panel's deliberation was the Land Use Decree of 29th March, 1978. By virtue of its being enshrined into the Nigerian Constitution, it is now called the Land Use Act of 1978.

Some Major Loopholes in the Land Use Act of 1978

The detailed provisions of the Act shall not be discussed in this work but brief highlights are made of some of grey areas. For instance, the Act says "in determining the amount of the original rent to be fixed for any particular land and the amount of the revised rent to be fixed on any subsequent revision of rent, the Military Governor, (b) Shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital."

This provision is repugnant to the principles of valuation and does not in any way encourage investment on land. Thus, any rent so arbitrarily conjured shall be applied on the property not minding the invested capital on the land (Mbadiwe, 1999).

Against the backdrop of provisions of the Act which vests all land comprised in the territory of each state in the Federation in the Military Governor of that state, Nwanekezie (1996:36) describes it as a "misnomer". Also, "the vesting of all lands on the Governor of a state means that there will be no more ownership of land as we used to know it by private persons, whether they are individuals or groups". The Act lacks technical strength as it was only viewed from the legal perspective which made it a failure.

The lamentation of Kalu in this note buttresses the lacuna in the portion of the Act which vests all land in a state on the Governor; "while the Land Use Decree eased the burden and enhanced the process of (and acquisition for state governments it created serious problems for the Federal Government. The Decree abolished the Public Lands Acquisition Act, Cap. 167 under which the Federal Government compulsorily acquired land directly for its projects and provided in section 8(4) that the Federal Government is to acquire lands required for her projects through the State Government. Even though section 28(4) of the Decree stipulates that:

The military governor shall revoke a right of occupancy in the event of the issue of

notice by or on behalf of the Head of the Federal Military government if such notice declares such land to be required by the government for public purposes.

The State Governments have reacted to the mandatory provisions of the section in different ways. While some have been extremely slow in responding to Federal Government's notices served on them in compliance with the section, others have either refused to honour such notices or have consented to honour them on terms which the Federal Government found difficult to accept. As a result of the State Government's recalcitrant approach to this issue, many Federal Governments' projects were stalled during the last civilian Government (1979-1983). The Decree has also created compensation problems for the Federal Government because some states now insist on assessing the compensation payable on lands acquired for Federal Projects. Some States have exploited the helplessness of the Federal Government on this issue to inflate the compensation payable for such lands. Unlike previous land laws in the country, the Land Use Act of 1978 created a new basis for determining compensation and this basis was hinged on arbitrary zoning system which had little or nothing to do with the Value of Land in these zones in the Open Market.

By creating zone values and Open Market value dichotomy, the Act creates therefore inadequacies in compensation payment to people disposed of their inheritances. This makes it quite unjust. The Act did not also make provisions for disturbance, severance and injurious affection (Kalu, 2001).

The Act is shrouded in confusion, injustice and controversy emanating from its ambiguity and its more than constitutional powers ..makes it a dreaded monster as evidenced in section 47 of the Act. As Oba Erediuwa quoted in Ibe (1999) puts it, "one wonders whether there is no conflict between the Land Use Act which has deprived everybody of his land with the provision of the constitution regarding payment of Compensation for property as distinct from crops". Concluding, Ibe insists that "the Land Use Act should be abrogated or reviewed for the betterDeprivation is social injustice...."

Arua and Okorji in www.vjao.com identified the following problems related to the Land Use Act: "Lack of adequate compensation and the inability of smallholders to increase the size of their holdings, the perception of the decree by Southerners as an overt political extension to the South of the Land Tenure Law of 1962 and the State Land Law of 1915 which applied to the north, and the absolute power given to the governor of each state, even to the detriment of the Federal Government. Furthermore, adequate administration and enforcement agencies were not provided (Arua, 1980) and a national cadastral survey and effective registration instruments were omitted. The absence of an effective policy on optimum land use that takes into account ecological variation is a viable defect of the decree".

"There is also a contradiction in respect of S.76 (2) of the Decree. Under the Act as we would see, compensation for land revocation is to be made promptly. The Decree on its part states that it should be made within a reasonable time. This clearly defeats the intention of the Act. Like S. 75, S.76 (1) states that compensation shall be paid in accordance with the Act. Clearly there is some confusion here. Although this Decree was amended in 1999, amendments do not touch the substance of existence, the impact of the Decree is yet to be felt for good or bad."(<http://www.babalakinandco.com>).

Land Reforms in Some Countries

Land reform is not only peculiar to Nigeria. For one reason or the other, many countries of the world have, at one time or the other, found it necessary to reform their land policies to enhance national development. A brief discourse of the philosophy behind the reforms in other countries may aid the process in Nigeria. Nevertheless, Kagwanja posits that "most land reform agenda are either driven by efficiency or equity objectives or both. Understanding the dynamics associated with different types of land rights is crucial to any land reform efforts". For instance;

Land Reform in Zimbabwe started after the signing of the Lancaster House Agreement in 1979 in an effort to more equitably distribute land between the historically disenfranchised blacks and the Minority whites who ruled Zimbabwe from 1923-1979 (Wikipedia).

In Kenya, the country embarked on Land reform using the instrumentality of consolidation and Registration of Land titles (Mbadiwe, 1998).

The Land Reform Act of Peru, 1964 was geared towards breaking the yoke of traditional tenure systems thus releasing land large enough for agricultural revolution"(Wikipedia).

Following violent revolutionary movements in some countries, the leaders elected to embark on appropriate land reform measures. This was the reason behind redistribution of Land in Chile, Mexico and Cuba. In Spain, al-Hurr in 718 transferred property from Muslims to Christians, who were taxable by much higher rates. In the East Asian Tigers and "Tiger cubs" nations such as Taiwan, South Korea and Malaysia, Land Reform was an important step in achieving economic development in these countries. In

Columbia, the Columbian Institute for-Agrarian Reform (INCORA) was created to enhance the Agrarian Reform in that country. Earlier attempts here were geared towards expropriation of private properties in order to promote "social interest". In china, Land is not privately owned but leased from the state on very long terms that allow substantial opportunity for private speculative gain (Wikipedia).

Reforming the Land Laws of Nigeria

Having critically appraised the Nigerian Land Use Act of 1978 and Land Reform Measures in some countries of the world, it is imperative to get the right thing done in the present attempt at Land Reform in Nigeria.

"The main thrust of the Land Reform (in Nigeria) is to change the existing land laws and ensure the emergence of land reforms that will optimize Nigeria's growth through the release of land 'for commercial farming and other large scale business by the private sector. The final result will ensure unhindered access to land to boost output and improve capacity .for wealth creation."(www.cenbank.org).

The major land law in place is the Land Use Act of 1978. The present government is eager to change this law (Act). Maybe, it has considered the serious lacuna in the law militating against the overall growth of Nigeria. If government is speaking of "release of land" it implies that the present land law in Nigeria has impeded access to land and has constituted a major setback in past attempts at moving the country forward. Government's concern in this direction is thoughtful given the many problems; legal, technical, etc, created by the existing law—a fall out of the faceless dictatorial regimes that ruled Nigeria for over 30 years.

The Nigerian Institute of Estate Surveyors and Valuers (N.I.E.S.V.) has urged government to establish a National Land Commission which would articulate the Land reform program and a National Policy for the country. N.I.E.S. V. pointed out the following roles for the Land Commission:

Provide an appropriate Institutional Framework to formulate Land Policies for the country.

Regulate procedures for protecting land tenure rights and land-based investments.

Provide operational guidelines and standards for land Management and Administration. A land administration system anchored on transparency and accountability could be achieved by the introduction of computerized land management system to enhance access to land information. As a result of having a transparent and accountable system, the development of an accessible Mortgage Market will be achieved (www.fao.org).

This multiplier effect of an improved Land Management system is relevant in the Nigerian situation as this will enhance the release of land, boost the market, expand the economy and propel the country's rise to world economic power even before 2020. In doing this, political, religious, sectional, regional, tribal and selfish sentiments must be eschewed. Government should understand properly the intended beneficiaries of the Land Reform program and the needs of each geopolitical zone. Considerations should be made of benefits/ costs of alternative land rights regime in the country and the capability of government undertaking this reform on specification, before embarking on it. This has to do with the political will of the handlers of the affairs of this great nation.

The Land Use Act makes it difficult for farmers to sublet or mortgage their lands as Security for Loans from Financial Institutions. The Act should therefore be amended to eliminate the requirements of Governor's consent for mortgages, leases, and all oilier transactions other than outright purchase (Daily Sun, 2008:7).

Summary, Recommendations and Conclusion

This paper has examined different perspectives of reform from the point of view of definitions. It considers the arguments for Land reform especially as held by governments that embark on reforms. Arguments against Land Reform Measures were raised. The researcher examined the brief history of Land laws in Nigeria under the Proprietary Land Structure of the Country. The Land Use Act of 1978 was x-rayed by pin- pointing grey areas. Reform measures of some countries were explored to serve as a lesson for the present attempt at Land reform in Nigeria. Though details were not given, a look at other country's effort in Land Reform is expected to encourage the policy makers at the helm of affairs in Nigeria and to garner the support of the Nigerian people in appreciating the worthwhileness of a Land Reform in a country that is full of hope but where things are working on the reverse and in stagnation.

In conclusion, the paper has shown that the present Land Law in Nigeria is faulty, controversial and unjust. It is a factor in the economic disempowerment of the Nigerian people. Development on land in Nigeria is slow and the process for acquiring title is nebulous. The laws are unjust and have led to more

litigations than even before it came. More fraudulent practices on land than ever are recorded on daily basis courtesy of fraudulent land officers in the country. Food Insecurity in the country is alarming because land in the country is held in unrelenting bondage. Government is challenged therefore to tackle these problem areas in the 1978 Land Use Act and create the environment necessary for wealth creation.

Recommendations are therefore made as follows:

A land law that will not capitalize on the instruments of law to forcibly take people's inheritances in land should be considered as a viable option.

Adequate provision for realistic compensations for any land acquired by government is very vital. Provision should be made such that compensation paid to land owners is, by all means, in equation to lost/acquired land.

The absolute powers of ownership vested in the Governor, which in most cases they have abused, should be trimmed down considerably. Hi rough the setting up of a land control authority like the National Land Commission. This Commission should be constituted on professional merit and less of political considerations,

Zoning of land values and compensations payable in different zones should not be so arbitrarily decided but should be done on the strict advice of the National Land Commission or the Nigerian Institute of Estate Surveyors and Valuers.

Digital Land Management system should be emphasized to curb corruption and create a transparent/accessible land system in the country.

The new land law should consider adequate compensations for disturbance, severance and injurious affection to reduce some areas of injustice in the law.

The law should provide for a Land Tribunal that will among other things, entertain cases of injustice, especially as they concern compensation issues and other causes of Land disputes engendered by flaws in the existing law.

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