

Impact of the Nigerian Land Use Act on Economic Development in the Country

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Abstract: This paper appraises the Nigerian Land Use Act and its capacity to engender economic development and prosperity. The Land Use Act was enacted in 1978 with the aim of energizing economic development by ensuring effective and equitable utilization of land and land resources in the country. As this paper has found out, however, achieving this lofty objective has been hampered by two major obstacles. The first is the inherent contradictions and defects in the law, and the second is institutional weakness and lack of political will to implement the Act fairly and equitably. The paper has further discovered that the result of these anomalies is a failure of the Act to accomplish some of its major objectives. To re-focus the Act and secure economic development and easy access to land by both government and the citizens, the paper has recommended the amendment of certain provisions of the Act in addition to mustering the political will by government to implement the amended version of the Act in a fair and equitable way.

Keywords: Land Use Act; right of occupancy; statutory right of occupancy; customary right of occupancy; economic development

1. Introduction

The Nigerian Land Use Act 1978 is the principal legislation that regulates contemporary land tenure in Nigeria. Upon its enactment, the law brought about radical, if not revolutionary, changes in the erstwhile land tenure systems in the country.² The law was aimed, among other things, at reducing unequal access to land and land resources, a situation that had caused a great deal of hardship to the citizenry. Massive and unfettered access to land and land resources by the citizens could stimulate the needed economic growth in an economy that depends heavily on

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² Before the coming into effect of the Land Use Act, there existed two main tenure systems in Nigeria: Land tenure in the north was regulated by statute known as the Land Tenure Law, 1962, while land tenure in the south was regulated mainly by customary law.

agriculture and mineral resources. The Land Use Act was equally targeted at reducing the high cost of land required for industrial estates and mechanized agriculture. For these reasons, the law appeared to nationalize land when it placed it in the hands of the government as a custodian, to hold in trust and administer for the use and common benefit of all Nigerians. However, after more than three decades of the operation of the law, it is apparent that most of the problems it sought to cure have resurfaced and certain provisions of the law have themselves worked hardship on the citizens and tended to impede economic development, which the Act initially sought to stimulate. This paper examines these issues against the background of their implications for economic development in the country.

2. Land Tenure in Nigeria Prior to the Land Use Act

Nigeria is a country with thirty-six states and a Federal Capital Territory. All of the states and federal capital territory could be subsumed within the North or South of the country. And both the North and the South had before the coming into effect of the Land Use Act operated different land tenure systems. When the British Government Colonized the northern part of the country, it promulgated the Proclamation of 1900 by which all the land in the territory was annexed by the British Government. Subsequently, the Colonial Government of Northern Nigeria set up the Northern Nigeria Lands Committee in 1908 to recommend an appropriate land tenure system for the region. Based on the committee's report which was adopted by the Colonial Government, the Land and Native Rights Proclamation of 1910 was enacted. The statute was replaced later by the Lands and Native Rights Ordinance of 1916. After Nigeria's independence, the Northern Nigerian Legislature enacted the Land Tenure Law, 1962, which was the operative legislation at the time the Land Use Act was enacted in 1978. The tenure systems formulated by these two statutes are in many respects similar. The major similarity is the vesting of all land in the territory in the government, which then made it available to the citizens through the grant of rights of occupancy. The system maintained by the Land Tenure Law 1962, ensured that the radical title in all the land in the territory was vested in the government of the Region. The government then held the land as trustee and ensured that the land, under its control and management, was used for the benefit of the subjects. Concurrently, the citizens were entitled to rights of occupancy, and certificates of occupancy were usually issued as evidence of these rights. Alienation

of a right of occupancy was only permitted upon the consent of the regional governor.

In the South of Nigeria, there was no uniform tenure system applicable to the various communities.

The various communities, tribes and nations comprised in the territory operated diverse land tenure systems, which largely endured and survived colonialism. The basic thrust of these various land tenure systems in the South was private ownership of land. Land was owned absolutely by private individuals, families or communities and was not subject to superior control save where the occupier held an inferior title as tenant or customary tenant. The government only exercised direct proprietary control over comparatively small areas which it had acquired for its own use. In effect, land could only be acquired through negotiation with various land owning families, communities or individuals. The radically title, therefore, was not vested in a government, but in the various landowners.¹ The government of the various States of southern Nigeria may however, compulsorily acquire land through the Public Lands Acquisition Laws applicable in the various States. Where this was the case, compensation was paid to the previous owners and the land was used for some public purposes. Outside the lands acquired by government, most of the lands in the South were the subject of private ownership and were as such articles of commerce. For that matter, individuals, families or communities had absolute liberty and discretion to sell, mortgage, lease or retain their land without reference to a superior authority.

3. Objectives of the Land Use Act

The Land Use Act aims principally at the effective and sustainable management and control of land in Nigeria particularly in a manner that gives government sufficient powers over the acquisition, transfer or otherwise assignment of land and land resources. In *Savannah Bank Ltd v. Ajilo*², the Nigerian Court of Appeal stated that what the mischief aimed at resolving by the Land Used Act was the abrogation of absolute ownership or freehold interest by the community, the family and the individual. When *Ajilo's case* went to the Supreme Court, the Court described it as a revolutionary law intended to change land management in Nigeria.³ There are a

¹ Judicial recognition of this tenurial system was given by the House of Lords in *Amodu Tijani vs. Secretary of Southern Nigeria* (1921) AC. 399.

² (1987)1 NWLR (pt. 413).

³ Reported in (1989)1 NWLR (pt. 97).

number of objectives, which the Act sought to accomplish, and these may be encapsulated for the sake of clarity. First, the Act was intended to curb land speculation, which accounted for the astronomical rise in land values especially in urban areas. It was believed then that once ownership of land was vested in the government, speculators would be forced out of business and government would then be able to stabilize the value of land. Second, the Act was intended to assist the citizenry irrespective of their social status to realize their ambitions or aspirations of owning the place where they and their families would live a secure and peaceful life. Third, investing ownership of land in government sought to remove the difficulty which government encountered in acquiring land for public purposes. Fourth, the Act intended to harmonize the tenure systems throughout the country especially in the southern part of the country which lacked a coordinated and formalized tenure arrangement as was the case in the North under the Land Tenure Law 1962.¹ In most parts of the South, the situation gave rise to multiple and endless litigations, which hampered economic development especially as it concerned the location of industries, the siting of infrastructural projects such as hospitals, schools, and the operation of mechanized agriculture. These problems, among others, were expected to be eliminated or at least drastically reduced by the enactment of the Land Use Act.

According to Ega:

The stated primary objective of the Act is to facilitate rapid economic and social change in the country through efficient land use. The immediate aims include prevention of land concentration in both the rural and urban sectors of our economy, control of land transactions, land prices and land speculation, and the facilitation of access to land for the state as well as private individuals and thereby remove a cause of socio-economic inequality.²

For Anyanwu *et. al*, the Land Use Act was enacted to satisfy the need for larger areas of land for agriculture and non-agricultural purposes; end racketeering and the unending litigations in land transactions due to rising demand for land; checkmate traditional land ownership that had constituted barrier to national development programmes; prevent a situation where on the death of a land occupier, inheritance problems arose in the form of excessive subdivision of holdings; cater for the need for sustained security of rights to land in matters of duration, compensation and

¹ See the Daily Sketch editorial of 14th April, 1978; Daily Times Newspaper of 11th Nov. 1976.

² L. Alegwu Ega (1985). Land Tenure as a Constraint on Agricultural Development in Nigeria. In (Nwosu, pp. 229-239).

alienation of rights in land and sharpen governments sensitivity to a system in which only the rich, powerful and influential owned. (Anyanwu, Oyefusi, & H. Oaikhenan, 1997) The Land Use Act itself gave an umbrella objective that it desires to achieve when it stated in its preamble that:

- Whereas it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved;
- 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;
- Now therefore, the federal military government hereby decrees as follows:¹

4. Achieving the objectives of the Act

The central objective of the Act, is to invest ownership of land in the government which then shall apply it equitably for the benefit of all Nigerians and for the country's economic and social development. The principle of State ownership under the Act is asserted in section 1, which provides as follows:

Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Government of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

This section is the most important provision in the Act as it vests the radical title in all land in the territory of a State in the Governor of that State. In effect, the ultimate ownership rights, which hitherto rested on individuals, families or communities, especially in southern Nigeria, shifted to the Governor as trustee for the benefit of all Nigerians. However, upon the commencement of the Act, certain parcels of land within the territory of a State were excluded from the authority and control of the Governor by the operation of section 49(1) of the Act. These were parcels of land

¹ What follows is the Land Use Act which originated as the Land Use Decree No. 6 of 1978 and into being on 29th March, 1978. But the National Assembly of Nigeria re-enacted this decrees in its entity and full tenor into an Act and made it subsisting under section 315(5)(d) of the 1999 Constitution of Nigeria.

owned or controlled by the federal government or any agency of the federal government. In *Ajilo's case*,¹ the Supreme Court of Nigeria stated that:

It is important to stress for emphasis that the only exceptions to the vesting in the Governor and of control and management by him are those lands excluded under sections 22 and 49(1) of the Act.²

Having vested title, control and management of land in the state on the Governor, the Act specified that the interest or title, which an individual citizen can have over land, is a right of occupancy. This power of the Governor is consolidated by a community reading of sections 5(1) and (2), 22 and 28 of the Act. Section 5(1) gives the Governor legal authority to grant statutory rights of occupancy to any person for all purposes.³ Section 22 makes it unlawful for any holder of a statutory right of occupancy granted by the Governor to alienate such right or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained. Section 28(1) on the other hand, empowers the Governor to revoke a right of occupancy for overriding public interest while section 5(2) extinguishes all hitherto existing rights to the use and occupation of land, which is the subject of statutory right of occupancy.⁴ If the object of attaining economic development and prosperity in Nigeria were to be attained by placing the control and management of land in the hands of the government, the Land Use Act could well have been a great success but as the subsequent analysis reveals, this unfortunately, is not the case.

5. Impact of the Act on Economic Development in Nigeria

In terms of attaining its set objectives, the Land Use Act has not been a success and two principal reasons account for this. The first is the Act's inherent contradictions

¹ *Supra*.

² Section 22 of the Act relates to the consent of the Governor to certain land transactions and the circumstances under which such consent shall not be required. Furthermore, section 2(1)(a) puts all land in urban areas under the control and management of the Governor of each State while section 2(1)(b) puts all other land under the control and management of the Local Government within the area of jurisdiction of which the land is situated. Interestingly, section 3 of the Act gives the Governor the power to designate parts of the territory of the State an urban area.

³ The Governor shall have the authority to issue a certificate in evidence of such right of occupancy under section 9(1) and by section 9(2) such certificate shall be termed certificate of occupancy.

⁴ In the same token, section 6(1) gives lawful authority to the Local Government Area for agricultural, residential and other purposes such as grazing. But the Law places a ceiling of 500 hectares for agricultural purposes and 5,000 hectares for grazing purposes.

and defects, the second is institutional weakness, and lack of political will in the country to secure a just, fair and effective implementation of the Act to bring about economic. On the first leg, the divesting of citizens' freehold title to their land is antithetical to their economic prosperity as land ceased from being an article of commerce upon the commencement of the Act. Against the backdrop that overwhelming majority of Nigerians have no other source of income and livelihood save the one derivable from land by way of subsistence farming or disposal to earn income for business or family needs, this dispossession has plunged the majority of Nigerians into poverty rather than prosperity. Isong, argues that any development strategy must ultimately be interwoven with the aspirations of the people and society rather than seek to pursue the ambitions of few people in government. (Isong, 1985, pp. 3-13) This dispossession therefore places less income in the hands of the vast majority of Nigerians and, for that matter, impacts adversely on the *per capita* income and the Gross Domestic Product (GDP). This leads to a vicious circle of low savings, low investment and slower economic progress.

Section 22 of the Act is particularly devastating as it prohibits any person to whom the Governor has granted a statutory right of occupancy from assigning, mortgaging, transferring, subleasing or howsoever adversely dealing with the land against the terms of grant without having first had and obtained the consent of the Governor.¹ Obtaining the consent of the Governor is fraught with administrative bottlenecks, financial burden, delays and even in some cases politicization. The severest consequence of the requirement for Governor's consent before alienation manifests in the area of mortgages. A mortgage is a security for the payment of a debt or the discharge of some other obligation for which it is given. Worldwide mortgages are an effective way of raising capital from financial institutions needed for investment that induces growth in the various sectors of the economy. To obfuscate this significant tool by preconditioning it to the Governor's consent in the light of the foregoing analysis is to weaken it. Worst of all, the Governor may withhold or refuse his consent and if it happens, the landowner would have been shut out from credit facilities that would otherwise regenerate his investment portfolio. In *Associated*

¹ It has earlier been stated that having vested title, control and management of land in the State on the Governor, the Act specified particularly in sections 5(1) and 15 that the interest or title which an individual citizen can have over land is a right of occupancy. See also *Arhiorhu vs. Delta Steel Co. Ltd* (1997)3 NWLR (pt. 491) 82; *Abidoeye vs. Alawode* (1994)6 NWLR (pt. 349)242; *Ohenhen vs. Uhumuavbie* (1995)6 NWLR (pt. 401)303; *Kari vs. Ganaram* (1997)2 NWLR (pt. 488)380; *Sande vs. Abdullahi* (1989)4 NWLR (pt. 116)387; and *Ikyawan vs. Ajivah* (1997)4 NWLR (pt. 499)365.

*Discount House Ltd. v. Minister of Federal Capital Territory and Anor*¹ the Supreme Court of Nigeria held that:

It has been argued and rightly too that it is the holder of a statutory right of occupancy granted by the Governor that should apply for consent to mortgage the property. This does not detract from the fact that the power to grant or refuse consent to the mortgage rests with the Governor.

The predicament of the landowner is further compounded by section 28 of the Land Use Act that empowers the Governor to revoke for overriding public interest any right of occupancy he had earlier granted. Overriding public interest includes when the Government requires the land for public purposes, projects or infrastructure. Sadly, the circumstances under which the Governor can exercise his power of revocation include where the occupier or holder of a right of occupancy assigns, mortgages, transfers possession, subleases or otherwise deals adversely with his right of occupancy or part thereof contrary to the provisions of the Act. This provision drains off any choices or freedom that a landowner may possibly have over his property except the one dictated by the mountains of bureaucracy, which he unavoidably has to deal with. Although, section 29(1) of the Act provides for the payment of compensation on the event of revocation by the Governor of a right of occupancy, such payment is to be made only *for the value at the date of revocation of their unexhausted improvements*. There are many problems with this requirement of the law. Those who validly obtained a certificate or right of occupancy over land that was subsequently revoked are not entitled to compensation if they did not make any improvements on their land or if they have exhausted such improvements, whatever they are. The question is what happens to the substance of the land itself as a store of value? A rural subsistence farmer or urban poor who depends on his land for sustenance losses out completely because there are no *unexhausted improvements* on the land. Moreover, compensation is not payable in the event of a revocation by the Governor where the holder of a right of occupancy has assigned, mortgaged, transferred possession, subleased or otherwise adversely dealt with a right of occupancy or any part thereof without the prior consent or approval of the Governor. In the same category are those who have breached any of the terms contained in the certificate of occupancy granted by the Governor.² Apart from the

¹ (2013)53.2 NSCQR 201 at 204; See also *Mbanefo vs. Agbu & Anor* (2014)57 NSCQR 410.

² Section 28(5)(c) of the Act even provides that refusal or neglect to accept and pay for a certificate issued in evidence of a right of occupancy but later cancelled by the Governor is an offence under the Act that can ground a revocation of a right of occupancy by the Governor without payment of

fact that compensation where applicable is largely and grossly inadequate, this atmosphere generated by the Act has done more to impoverish Nigerians than otherwise.

Although section 15 of the Act provides that during the term of a statutory right of occupancy, the holder shall have the sole right to and absolute possession of all the improvements on the land, such right and possession only relates to improvements that the holder still cannot transfer, assign or mortgage without the prior consent of the Governor or would lose if in breach of terms and conditions in the certificate of occupancy. This clearly creates a problem of security of title because though it is conventional in Nigeria to grant a certificate of occupancy for a period of ninety-nine years, there is nothing in the Act that prevents the Governor from granting a certificate of a lesser period. Section 8 of the Act only enjoins the Governor to grant a right of occupancy for a definite or fixed term. Where the right covers a short term then it amounts to economic risk to embark on massive improvements because of the atmosphere of uncertainty induced by the Act.¹ More so, unless the certificate of occupancy contains a renewal clause, the Land Use Act does not contain a renewal provision so that if a Governor chooses not to renew a right of occupancy, the rights holder is bereft of remedy. (Chianu, 1992)

On the second leg, national institutional frameworks are weak and the requisite political will that could have guaranteed a firm, equitable and just implementation of the Act is lacking. The result is that the cost of land continues to rise astronomically and land speculation has become even more rife than previously. Land has continued to be accumulated in the hands of the private rich few who have the wherewithal to acquire them. Concurrently, the harsh economic climate in the country with rising cost of living has put Nigerians in dire straits such that some who have access to land whether by inheritance, previous purchase, or by family or communal allotments are more readily predisposed to selling them to meet immediate survival needs. Thus, the rich continue to accumulate more and more lands to the detriment of the dominant poor. The situation has been complicated by the politicization of almost all public affairs and institutions in the country. This has resulted in a situation where sitting Governors revoke the certificates of occupancy of political adversaries or refuse to grant it to those who do not share their political

compensation. See also *Administrators/Executors of the Estate of General Sani Abacha vs. Eke-Spiff & 3 Ors* (2009)37 NSCQR 364.

¹ See the Supreme Court decision in *Nzelu vs. African Continental Bank Ltd* (1974)5 SC 93.

vision. At the same time, in some cases, grants of rights of occupancy have been made to political cronies and associates of the Governors even against the tenets of the Act. It is no wonder then that, after more than three decades of operating the Land Use Act, few of its set objectives could be said to be accomplished and the Act has neither generated the anticipated economic prosperity and equality of access to land for Nigerian nor the desired economic development that it was hoped to usher in.

6. Recommendations

The intentions and objectives of the Land Use Act are no doubt lofty and well intentioned but the Act turned out to be defective in many respects. Shackled with institutional failure, dearth of political will and inherent defects, the law could not achieve most of its set objectives. Notwithstanding, the desire for economic development through effective, fair and equitable utilization of land and land resources could be attained if the law is holistically amended to overturn certain anachronistic and antithetical provisions and replaced with realistic and effective policies that would put the Nigeria on the part of economic progress. Among other things, section 8 of the Act should be amended to make the grant of a statutory or customary right of occupancy permanent. This would guarantee the security and stability of economic interests and improvements on land, the subject matter of a right of occupancy. As the experience in operating the law has shown, when a certificate of occupancy is issued for a short duration of time, it amounts to economic risk to invest on the land, which is the subject matter.

Furthermore, section 22 of the Act should be amended to eliminate the requirement of obtaining the consent of the Governor before a holder can alienate his right whether by assignment, mortgage, transfer of possession, sublease or otherwise. This provision makes it cumbersome for landowners to obtain credit facilities from financial institutions needed for projects, businesses and other ventures. Aside of other negative influences, obtaining the Governor's consent can cause prolonged delay in economic transactions. Again, section 28 of the Act should be amended to limit the grounds upon which the Governor can exercise his power to revoke a right of occupancy for overriding public interest. Such grounds specifically should not include alienation by a landowner of his interest in the land.

Similarly, section 29 should be amended to make compensation payable not only for unexhausted improvements on the land, but also for loss of the land itself as a store

of value together with the improvements. Compensation should also be commensurate with the market value of the land and the improvements therein. Other ancillary provisions of the law should be amended to give effect to the above recommendations. When these amendments have been made, government should muster the requisite political will to implement the law effectively, fairly and equitably. It should also eschew any tendencies to apply the law as a weapon of political vendetta where the Governor can use his power to revoke the certificates of political opponents and re-assign such lands to their cronies as the case of *Administrators/Executors of the Estate of General Sani Abacha v. Eke-Spiff* and similar cases have shown.

7. Conclusion

The Land Use Act, at the time of its enactment, was hailed as a revolutionary law that would propel Nigeria into the path of economic prosperity.¹ It effectively abrogated absolute ownership or freehold interests by the community, the family and the individual and created same in favour of government to hold in trust for the use of all Nigerians. Unfortunately, the optimism that heralded the Act gradually and steadily faded into disillusionment as its lofty aims turned out to be defeated due to inherent defects and contradictions in the Act on the one hand, and institutional failure and lack of political will to implement the Act firmly and equitably on the other. Recognizing this disappointment, the Supreme Court of Nigeria captured the frustration of Nigerians when it held in *Ogunleye vs. Oni*² that:

The Land Use Act has departed from the magic wand it has been portrayed to become a destructive monster that at once swallowed all rights on land so that the Governor or local government with mere issuance of a piece of paper, could divest families of their homes and agricultural lands overnight with a rich holder of certificate of occupancy driving them out with bull-dozers and cranes.

To ameliorate the situation, it is recommended that certain unfair provisions of the Act such as sections 5, 6, 22, 28 and 29 be amended to give the Act a human face and to restore prosperity to the people while securing an equitable access to land in the country.

¹ *Abioye vs. Yakubu* (1991)5 NWLR (pt. 190)130

² (1990)2 NWLR (pt. 135) 745.

8. References

Anyanwu, J.C.; Oyefusi, A.; Oaikhenan, H. & Dimowo, F.A. (1997). *The Structure of the Nigerian Economy (1960 – 1997)*. Onitsha: Joance Educational Publishers Ltd.

Chianu, E. (1992). *Title to Improvements on Land in Nigeria*. Benin: Ernslee Ltd.

Ega, A.L. (1985). *Land Tenure as a Constraint on Agricultural Development in Nigeria*. In Nwosu, E.J. (ed) *Achieving Even Development in Nigeria: Problems and Prospects*. Enugu: Fourth Dimension Publishers.

Isong, C. (1985). Spreading the benefits of Development to all Nigerians. In Nwosu, E.J. (ed). *Achieving even Development in Nigeria: Problems and Prospects*. Enugu: Fourth Dimension Publishers.

***(1962). *Land Tenure Law*.

***(1976). *Daily Times Newspaper 11th Nov*.

***(1978). *Daily Sketch Newspaper, 14th April*.

***(1978). *Land Use Act*.

***(1999). *Constitution of Nigeria*.