

Credit Aspects of Land Reform and Land Settlement Schemes in Nigeria

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Abstract

It is obvious that the life of man and that of the society revolve around land and its resources. This importance of land to man and the society 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. Furthermore, the nexus between land and economic prosperity of an individual and a nation informed the constitutional provisions respecting the inviolability of private property rights in various jurisdictions around the world. This work focuses on the credit aspects of land reform and land settlement schemes in Nigeria. The findings, manifestly, show that Land Use Act 1978 (Act) brought enormous reforms to the administration and management of land in Nigeria, including the aspects of land settlement schemes. Which has, remarkably, improved the economic value of land, and prescribed a much more better and equitable ways of alienating interest in land as expressed in the combined effect of Sections 21, 22, 23, 24, 26 and 34(7) of the Act. It also notes that Land settlement schemes are projects with positive impact on land, and not fettered by the provision of the Land Use Act 1978, as previously thought. Even the ones created by Deed or Wills before the Land Use Act as adumbrated in Section 26 of the Act, Therefore, we recommend that Governments at all levels should create land settlement schemes, so as to improve land, the fortunes and living conditions of the citizens, and, by extension, food security through the Farm settlements.

Keywords: Credit aspects, land reform, land settlement schemes.

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INTRODUCTION

Human society the world over is heavily dependent on land and its resources. It is not an overstatement to say that without land there would be no human existence. This is because it is from land that man gets items very essential for his survival such as food, fuel, clothing, shelter, medication and others^[1]. Omotola succinctly puts it thus:

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 the individual and the society. It is inseparable from the concept of the

society. Man has been aptly described as a land animal ^[2].

From the foregoing, it is obvious that 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. 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 land 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

¹ Tunde Otubu, 2010, *Land Reforms And The Future Of Land Use Act In Nigeria*
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²Omotola J.A.: Law and Land Rights: 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

management practices that deal comprehensively with potentially competing land requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs [3].

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 underscored in the words of a learned author [4] to wit:

It has long been recognized by Economists and other behavioral scientist that land is an important factor of production that has an almost inelastic supply curve. 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.

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 44 of the Constitution⁵ provides that no right or interest in movable or immovable property shall be compulsorily acquired anywhere in Nigeria without the payment of compensation. Similarly, The Land Use Act, 1978 was enacted to address and reform land, and by extension, provide management options to land administration in Nigeria. As enunciated thus, in the preamble to the law [6]:

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 ...

The credit aspects of land reform and land settlement schemes in Nigeria shall be the main focus of this work. Efforts will be made to espouse the impact

³ See Declaration of United Nations Conference on human settlements available at www.un.org/conference/habitat visited on 14th August, 2015.

⁴ . Banire. M.A.: Land Management in Nigeria: Towards a New Legal Framework Ecowatch Publication Limited 2006 p 4.

⁵ See Constitution of Federal Republic of Nigeria 1999 (As amended) or LFN 2004.

⁶ Land Use Act 1978

of the reforms, the historical perspective, legal framework, a peep through the various schemes, and also, to rummage into the labyrinth of related postulations.

Credit aspects of land reforms engendered by the Land Use Act

Land Use Act [7] is a revolutionary legislation and a landmark in the history of land tenure in the country. As a writer succinctly put it, the announcement of the Decree (now Act) was... greeted with ovation in many quarters and heralded as the only legislation which was going to transform Nigeria from the abyss of underdevelopment. It is no doubt that the Act came with laudable objectives. This perhaps informed the foregoing attitude of the people to the announcement of the Act. Pursuant to its objectives, the Act came up with certain policies as innovations in the area of land tenure and administration in Nigeria. The policies intended by the Act include the following:

Uniform Land Policy

The Land Use Act of 1978 is the first and only legislation that has brought the land tenure system in this country under a uniform land policy. Despite series of legislations on land before the promulgation of the Act in 1978, the Southern part of Nigeria, especially, was marked by lack of coordinated and formalized tenurial arrangement. The result of this gave rise to endless litigations which constituted a clog on the economic development. Under the Act, various laws relating to land tenure in Nigeria which applied prior to the promulgation of the Act were unified. This has led to a dramatic change in land tenure system in the country. It needs be mentioned that one of the objectives of the Act is to streamline the land tenure system in this country by reducing areas of conflict and the hazard occasioned by the activities of land speculators. This aim is already achieved by the Act. Supporting this view, former President Shehu Shagari said that **'the Act has harmonized the land tenure system in this country and also eased access of government to land [8]'**. This reform has also made the works of lawyers and courts easier in determining the applicable land law in any case. As Jakande puts it,

'any appraisal of the policy of the Land Use Act, it is the first time in this country that any government has undertaken an exhaustive and comprehensive review of land policy in all its ramifications, and has come out with clear-cut decisions, law and regulations[9].'

State Ownership, Control and Trusteeship Policy

⁷Land Use Act No.6 March 29, Cap L5. LFN 2004

⁸ Daily Times, May 12th, 1988

⁹ Former Governor of Lagos at National Workshop on Land Use Act 1978 on May 25th, 1981 at University of Lagos, Akoka.

One of the policies intended by the Act in land tenure and administration in Nigeria is the state absolute control and ownership of land in Nigeria. The idea is to nationalize land such that the absolute ownership and control of land in Nigeria would no longer be within the powers of the communities, families or individuals but the Government. This policy is asserted by section 1 of the Act which vests all land within the territory of each state in the federation in the Governor to be held in trust and administered for the use and common benefit of all Nigerians. The concept of state trusteeship for the whole nation is to make sure that an individualistic conception of property does not rear its ugly head again. Even in the case of the former Northern Nigeria where under the Land Tenure Law, the law seemed to assert state ownership over land, it also protected the customary rights of the natives [10] thus creating dual allegiance. Under the Act, the ownership concept was simplified. The Act in content vests the radical title in land in the Governor as the trustee and the rights of occupancy in the people. This position was supported by the court in *Abioye v. Yakubu*(supra) and *Ogunola v. Eiyekole*[11] Supporting the foregoing view, Smith observed that “with the advent of the Land Use Act, 1978, the ownership structure has been radically transformed [12]”. He maintained further that, the radical title to land within the territory of a state in Nigeria having being vested in the Governor, what Nigerians enjoy are the rights of occupancy so that the ownership concept in land in Nigeria today may be construed in terms of a right of occupancy. In *Madam Safuratu Salami & Ors v. Eniola Oke*[13] Oputa J. S. C. said that “...the innovation introduced by the Land Use Act was to divest any claimant of radical title and limit his claim to a right of occupancy”. The Land Use Act by this policy of trusteeship differs from the paternalistic one in its essential objects. While paternalism (the system adopted in Northern Nigeria) aimed at ensuring for members of ethnic groups the use and occupation of land and permitted discrimination against members of other ethnic groups, ‘Trusteeship’ aims at securing the implementation of fundamental objectives of national policies and proscribes discrimination in land matters. The method of achieving these objectives were by vesting all land comprised in the state other than federal lands [14], in the Governor of the state for the use and benefit of all Nigerians and by establishing uniform national principles.

Planned Development and Environmental Protection Policy

Planning in this contest has to do with physical or town planning as intended by the Land Use Act. That is, master planning out in urban areas and local

planning which has to do with layout development plan or site layouts. This physical or town planning can broadly be described as the wise and most optimum use and management of the resources and the direction and control of the development of an area in such a way as will most efficiently promote and safeguard the health, safety, convenience and the economic, cultural, social and general welfare of the people and the amenities of every part of any given area, small or big. Before the enactment of the Land Use Act in 1978, people could use land, build thereon without proper planning. This however changed after the enactment of the Act. Although there is nowhere in the Act where town planning is expressly mentioned, a critical look at the provisions of the Act reveals that some physical planning terminologies are stated in the Act. Example of these are: Land Use, Urban areas, Resettlement of person affected by the revocation of rights of occupancy, Developed land, Undeveloped land, Erection of any building, wall, fence or other structures upon any land, Contravention[15]. Under the Act, some areas in the state are declared as urban areas where any person is to have the right of occupancy of not more than half hectare (1.2 acres) of undeveloped land that can be used ‘for all purposes’ and establishment of both state and Local Government Land Allocation Committees[16]. In non-urban areas, the Governor has the power to grant a right of occupancy to a person on ‘400 hectares’ (988 acres) of land prospecting for building materials like stones, gravels [17] etc. The Local Government has the power to use up to ‘500 hectare’ (1,235 acres) for ‘agricultural purposes’, and up to ‘5000 hectare’ (12,355 acres) for ‘grazing purposes.’ If any Local Government wants to grant more than the above to any person, etc., it must obtain the Governor’s consent before doing so[18]. No person or group of person has the power to sub-divide or layout any land above half hectare (1.2 acres) in any urban area, and transfer any plot therein to any person without the consent of the Governor.¹⁹ That is, no person or family or company, etc., can lay out any land more than half hectare in any urban area and submit same to the Governor for approval as was being done before the promulgation of the Land Use Act in 1978. ‘Contravention,’ in the realm of Town Planning, means an illegal or unauthorized development having no approved building plan. That is, any structure erected anywhere above or underneath the ground without any approval is a contravention. This is frowned at by the Act in section 43. This policy brought the following advantages: Firstly, since all the undeveloped land in every state has been vested in the Governor, the physical planner can plan vacant land and zone any part thereof for any use including public open space. Secondly, The Land Use Act enables the Town planner

¹⁰ See s.2 .5 of the Land Tenure Law 1962.

¹¹ (1990) 4NWLR (pt.146) 632at647

¹² Prof. I.O Smith (2013). *Practical Approach to Law of Real Property in Nigeria*, Ecovatch Publication, Lagos

¹³ (1987) 4NWLR (pt.63) 16

¹⁴ Section 49 of the Land Use Act, 1978.

¹⁵ Section 1, 2, 3,43, 2(2) (b), 33, 34 (2), 36(4), 34(6) of the Act.

¹⁶ Section 2(2) and (5) of the Act

¹⁷ Section 12 of the Act

¹⁸Section 6(2) of the Act.

¹⁹ Section 37(7) of the Act.

to plan in such a manner that different land uses are juxtaposed in the most harmonious and beneficial relationship for the good of the people in an area or in a state. This is because the end product of scientific planning is the optimum use of land in any area for the good of the people in the affected area at any given time frame. Thirdly, by this policy, the Land Use Act has limited but not eliminated land grabbing practices of land speculators who buy land cheaply from those who claim to be original owners and sell later at exorbitant prices to others. Fourthly, by physical planning under the Act, freehold interests in land have been cancelled since such interests have become leasehold interests for a limited period of time as from 29th March, 1978.

Land Use Policy

The Land Use Act of 1978 introduced and emphasized the principle of land use in land tenure system in Nigeria. Under the Act, the right of occupancy introduced by the Act is construed on the need to secure for all Nigerians the use and enjoyment of land, and the natural fruit therefrom. This stands in direct opposite to the freehold system under the common law in the sense that the Land Use Act places emphasis on the utilization of land while the freehold system protects title to ownership of land. It can therefore be said to day that the Land Use Act has brought into our land tenure system the principle of effective utilization of land. From the provisions of the Act, there are four aspects of the policy of land use which need be clearly distinguished: Firstly, the control of the manner in which land is used. Secondly, the obligations imposed on the right holder to utilize his land and the consequence of breach of these obligations. The strongest argument for the introduction of rights of occupancy was the process of facilitating planned development as an aspect of land tenure. While at common law, the freehold system is characterized by discretion in the owner to use or neglect the use of his land expressed as the concept guaranteed, the right of occupancy is characterized by the adoption of the principle that security of tenure depends on land utilization. Thirdly, the effect of occupation and use on title (land to the user) fourthly, the protection the law accords to the developer which may be expressed in terms of the incentives to develop land and the guarantee of his rights to the unexhausted improvements therein.

Right of Occupancy or the Leasehold Policy

This is a device adopted by the Land Use Act to link a person to a piece of land. Having adopted the dual schemes of management and control of land between the state and the Local Government[20], the Act proceeds to empower each of them to grant rights of occupancy in appropriate cases which could be either statutory or customary rights of occupancy. It is statutory if granted by the Governor, and customary if granted by the Local Government. Both statutory and customary rights of occupancy can be expressly granted

or granted by the operation of law [20]. Although by vesting of all land in the territory of each state in the Federation in the Governor of each state, the radical title to land now inheres in the state, by the policy of right of occupancy which is equivalent of a leasehold interest in land, a claimant is still entitled to a declaration of title to a right of occupancy. Thus in Madam Safuratu Salami's case (supra), the court observed that the Land Use Act by this innovation was to divest any claimant of radical title and limit his claim to a right of occupancy. The claimant can thus be entitled to a declaration of a title to right of occupancy. A statutory right occupancy may be granted for a term of year under section 8 of the Act. The other policies includes the following

Certificate of Occupancy

Another important reform of the Land Use Act is the issue of certificate of occupancy. Section 9(1) (a)-(c) of the land use Act which is in pari-materia with section 10(1) (a)-(c) of the Land Tenure Law of 1962 provides thus:

It shall be lawful for the Governor

- When granting a statutory right of occupancy to any person; or
- When any person is in occupation of land under a customary right of occupancy and applied in the prescribed manner; or
- When any person is entitled to a statutory right of occupancy, to issue a certificate of occupancy under his hand in evidence of such right of occupancy.

The significance of a certificate of occupancy as provided for in section 9 above are that when issued under the hand of the Governor it evidences title as opposed to conferment of ownership. One of the effects of the Land Use Act is that no person can now own land as compared to the ownership of the right to use land.

Redistribution and Equitable Policy

Before the Land Use Act, the land policy of the nation was inadequate to fulfill the hope and aspirations of many Nigerians. The state lands were shared among the ruling classes with some people owning three or four state plots when thousands of others had none. As the Constitutional Drafting Committee noted in its report. 'it is revolting to one's sense of justice and equity that one person alone should own 3 or 6 and more plots of state land in any state, when others of comparable status have none[21]'. In essence, the monopoly of land by a few was the characteristic of the pre-Act land tenure system especially in the Southern Nigeria. During this time, speculations over land were the common feature and

²⁰ Section 5, 6, 34 and 36 of the Act

²¹Report of the Constitution Drafting Committee vol.1 September 14, 1976 at p. xii 56

practice in land tenure system. This resulted from fragmentation of land especially by the few influential. A typical example was the case of Bamgbose's family in Lagos or the Olotu's family who held many plots of land at the expense of the majority who had nothing to hold. With the policy of equitable redistribution under the Act, the situation however changed. By section 34(5) and (6) of the Act, all undeveloped lands which were held in excess by the occupiers or holders before the Act were reduced to only one plot not more than half hectare which they can now retain. The remaining plots revert to the Governor to be held in trust for the use and common benefit of all Nigerians. By this policy, the Act has drastically reduced speculations and racketeering over land. The half hectare rule as provided by the Act has been viewed to be 'land-pooling' which makes for presumably the equitable distribution of undeveloped land in urban areas. On the final note, it must be stated that as from 29th March, 1978 when the Land Use Act commenced, there is no room for holding undeveloped land in urban areas in excess of one plot not more than a half hectare.

Alienability of a Right of Occupancy

One of the criticisms against the pre-Act customary land law was that it did not allow alienation to a total stranger. This was seen as a strong inhibition to the value, merchantability of land held under native law and custom. One of the objectives underlying the introduction of the Land Use Act was to make transfer of land easy and with the ultimate goal of enhancing the value of land. Thus, by the combined effect of sections 21, 22, 23, 24, 26 and 34(7) of the Act, the objective of transferring land from one hand to another is guaranteed. But such alienation must be subject to the consent of the appropriate authority. The foregoing is contrary to the belief of many Nigerians on absolute prohibition of alienation or transfer of a right of occupancy by the Act whether in respect of developed or undeveloped land. As such, with requisite consent having been sought and obtained, the Act allows the holder of a right of occupancy to alienate or transfer all or part of his interest in such right. Thus, in *Savannah Bank Ltd v. Ajilo* [22] and *National Bank of Nigeria Ltd v. Adedeji* [23], the courts held that ...the requisite consent is required for an effective and valid alienation on both actual and deemed grants. The Act also recognized that a right holder having sole and absolute possession of the improvement on the land, he is entitled to dispose of same with the consent of the Governor by virtue of section 15(a) (b) of the Act. The holder of a right is equally entitled to compensation in the event of revocation of a statutory right of occupancy. Thus, the maxim *Quic quod plantatur solo cedit*, does not apply to a holder of a statutory right of occupancy with improvements thereon since 29th, March 1978.

²² 1989) 1 NWLR (pt. 97) 305

²³ (1989) 1 NWLR (pt. 76) 212

Land settlement schemes in Nigeria

Land settlement is an aspect of land reform wherein the state allocates, create, and /or develop a sizeable parcel of land for residential, farming and /or other purposes for the citizens. This entails the following;

- Securing of the proposed land, which may be acquired or purchased;
- Development of the proposed land; and
- Allocation of the developed plots to the beneficiaries, etc.

In Nigeria, there is a paucity of this aspect of land development and reform, especially, in the area of residential settlements. Finima residential settlement in Rivers State depicts a successful land settlement scheme and a clear validation of the benefit of the scheme and its credit impact on land development and reform. However, Farm settlements abound, but most of them were established back in the days, for instance, the Sawonjo Farm Settlement, Igbogila village, Ogun State, established in 1965 by Chief Obafemi Awolowo^[24], is said to cover over 25 hectares. It is divided into sections for interested farmers. Each farmer gets a total of 5 acres on which he has a 2 bedroom farm house attached to it. In a nut shell, you have a beautiful house (though very dilapidated due to lack of use) to live in while you do your farming. That not all, for the use of the settlement is an Agric Farm Service Corporation where the farmers could purchase seeds, fertilizers, pesticides and herbicides^[25]. Machines such as tractors, plough, slashes etc. were also available to be used on the farm at a subsidized fee. Aside these, a primary and secondary school were available there to serve both the villagers and families in the farm settlement if any. Ojo further asserted that the then Governor, Colonel Oladipo Diya (as he then was) employed graduates in 1984 to work in the farm settlement [²⁶]. These activities and improvements, by extension, significantly develop land, and also, upped the economic value of the project.

Land settlement scheme Tanzania example

The 1973, Vijiji (Villagisation) project embarked upon by the Tanzania's government was an attempt to introduce land settlement scheme. The project was to relocate and settle hundreds of thousands Tanzania's citizens to Ujamaa (socialist) villages to facilitate service and communal farming. District Development Councils was formed and saddled with the responsibility of allocating land to registered Ujamaa villages, while the Village Councils (first elected in 1975) allocates land directly to households. This, however, failed in the 1980s, prompting the authorities to abandon the project. But, while it lasted, it

²⁴ the then Premier of the Western Region of Nigeria

²⁵ Ojo Olawale Isaiah, 2013. *What happened to the days of farm settlements in Nigeria?*

²⁶ Ibid, 26

occasioned tremendous developments on the value of the lands used for the project. It should be noted that this became the foundation upon which the Tanzania's land reforms were predicated [27].

CONCLUSION/ RECOMMENDATION

Land Use Act 1978 brought enormous reforms to the administration and management of land in Nigeria. Which has, remarkably, improved the economic value of land, and prescribed a much more better and equitable ways of alienating interest in land as expressed in the combined effect of Sections 21, 22, 23, 24, 26 and 34(7) of the Act. It should also be noted that Land settlement schemes are projects that have positive impact on land, and also not fettered by the provision of the Act. Even the ones created by Deed or will before the Land Use Act as adumbrated in Section 26 of the Act, as observed by Smith[28]. Therefore, we recommend that Governments at all levels should create land settlement schemes, so as to improve land, the fortunes and living conditions of the citizens, and, by extension, food security through the Farm settlements.

REFERENCE

1. Tunde Otubu, 2010, *Land Reforms And The Future Of Land Use Act In Nigeria*
2. Lecturer, Faculty of Law University of Lagos. Akoka. Email: bullet20042003@yahoo.com.
3. Omotola J.A.: Law and Land Rights: 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
4. See Declaration of United Nations Conference on human settlements available at www.un.org/conference/habitat visited on 14th August, 2015.
5. Banire. M.A.: Land Management in Nigeria: Towards a New Legal Framework Ecowatch Publication Limited 2006 p 4.
6. See Constitution of Federal Republic of Nigeria 1999 (As amended) or LFN 2004.
7. Land Use Act 1978
8. Land Use Act No.6 March 29, Cap L5. LFN 2004.
9. Daily Times, May 12th, 1988
10. Former Governor of Lagos at National Workshop on Land Use Act 1978 on May 25th, 1981 at University of Lagos, Akoka.
11. See s.2 .5 of the Land Tenure Law 1962.
12. (1990) 4NWLR (pt.146) 632at647
13. Section 49 of the Land Use Act, 1978.
14. Section 1, 2, 3,43, 2(2) (b), 33, 34 (2), 36(4), 34(6) of the Act.
15. Section 2(2) and (5) of the Act
16. Section 12 of the Act
17. Section 6(2) of the Act.
18. Section 37(7) of the Act.
19. Section 2 (1) of the Act
20. Section 5, 6, 34 and 36 of the Act
21. (1989) 1 NWLR (pt. 97) 305
22. (1989) 1 NWLR (pt. 76) 212
23. Chief Obafemi Awolowo, Premier of the Western Region of Nigeria
24. Fimbo,G.M. (2004). Land Law reforms in Tanzania. Dares Salaam University Press, Dares Salaam.
25. Prof. I.O Smith (2013). Practical Approach to Law of Real Property in Nigeria, Ecowatch Publication, Lagos
26. Ojo Olawale Isaiah, 2013. What happened to the days of farm settlements in Nigeria?

²⁷ Fimbo,G.M. (2004). Land Law reforms in Tanzania. Dares Salaam University Press, Dares Salaam.

²⁸ Prof. I.O Smith (2013). *Practical Approach to Law of Real Property in Nigeria*, Ecowatch Publication, Lagos