

LAND REFORM IN NIGERIA AND THE BATTLE TO AMEND THE LAND USE ACT

The Land Use Act since its promulgation by the then military government in 1978 has provided controversy both in the legal circles and in its practical and working effect, likewise the administration and management of the land in Nigeria which the Land Use Act ushered in has in recent times been regarded as an albatross weighing down the effective use and development of land in Nigeria.

This paper looks into the issues regarding the present challenges and proposed reforms in the Land Use Act and the land administration system in Nigeria. It is divided into 3 sections. Section 1 addresses the background, the present issues and challenges. Section 2

addresses the proposed amendments to the Land Use Act, whilst section 3 looks into the proposed overhaul and reform of land administration and management as proposed by the Presidential Technical Committee on Lands.

Section 1

Since its coming into force, commentators have queried its usefulness, its challenges and its effectiveness in curing some of the defects which existed in the pre-colonial land administration systems. In particular, the land tenure system which existed in pre-colonial Nigeria was felt to have been too cumbersome and in particular, did not allow for the growth and development of land.

The promulgation of the Land Use Act sought to address some of the issues which had plagued the land tenure system prior to its creation. Primarily, it sought to ensure that the hitherto difficulty of acquiring and purchasing land particularly owned by families and communities was removed. This system

which operated particularly in the South of Nigeria, was seen as a serious constraint to the effective alienability of land and therefore created a clog to the full, fast and efficient physical development of an area. By vesting the rights of ownership and allocating in the Governor, the Land Use Act sought to make land more 'alienable' and therefore attempted to ensure rapid physical development as the Governor (or Local Government Chairman as the case may be) could more easily allocate the land to person who were to develop it.

Somewhat ironically exactly 30 years after its coming into force in 1979, and after the 'second coming' of the creator Olusegun Obasanjo of the Land Use Act, two important measures were taken by the Yar adua administration to address the issue of land administration in Nigeria.

Firstly, the administration set up a Presidential Technical Committee on Land Reform (PCLR) (hereinafter 'the Committee), to make recommendation regarding the administration of land in

Nigeria and secondly, introduced a Bill before the National Assembly which sought 'To Alter the Provisions of the Constitution of the Federal Republic of Nigeria by Amending the Land Use Act Cap L5 LFN 2004 of the and other Related Matters' (hereinafter 'the Amended Act').

The controversy surrounding the Land Use Act stems around its inability to address some of the modern day challenges facing a growing and developing nation in its land ownership and registration systems. In the modern day capitalist economy, land has become a means whereby wealth is created, its has become a function not just for agricultural and accommodation but more importantly it has become a means of financing growth in the economy as a whole, by allowing owners to access the wealth generated from the value of the land.

It is somewhat ironic that the keystone of the Land Use Act which sought to be a panacea and address the pre-colonial problems relating to the alienability and free and easy transfer of interests in land

has itself become the albatross which has led to the strong and persistent clamour for the amendment of the Act.

This central feature of the Land Use Act is contained under sections 21 and 22 of the Act which vest the Governor with the sole and exclusive ownership of land (though as custodian for the people of the State). In this capacity the Governor had the sole right to consent to any transfer of land and to allocate land.

The criticism of the Land Use Act has mainly surrounded its central feature namely;

- the vesting of land in the Governor (or Local Government Chairman),
- the right of the Governor (or LG Chairman) to allocate Rights of Occupancy
- the requirement for Governor's consent in respect of the transfer of interest in land and the attendant delays in obtaining the consent.

- delays in obtaining the Right of Occupancy.

The failure of the Land Use Act in the modern economy has led to a growing number of commentators to advocate its amendment or outright abrogation. In addition, the effectiveness of the Land Use Act as the governing legislation in the administration of land has come under serious challenge by the Nigerian courts leading to a number of decisions which have had serious credibility implications on the efficaciousness of the Certificate of Occupancy as the sole and conclusive evidence of title in land.

It has become clear through a number of court decisions, that the Certificate of Occupancy as issued by the Governor can no longer be held up as evidencing the conclusive right to the parcel of land. The courts have especially in Lagos held that the 'possessory rights' that is that rights that pre-existed the issuance of the Certificate of Occupancy still subsists and evidence true ownership of the land. Thus it would be not enough to brandish a certificate of occupancy alone to claim

true ownership but must also show the root of title.

The further implication on the whole economy has meant that the land which in a modern developing economy should have been used as a means of finance, through mortgages and loans has not been effectively used in that way as both the courts and banks have been ever reluctant especially outside the Federal Capital territory to accept the Certificate of Occupancy as the conclusive evidence of title ownership. This has ultimately meant that owners, capitalists and entrepreneurs have been unable to easily raise finance by collateralising their landed property in order to create wealth and further development of the economy and the housing market

It is instructive to note in this regards a recent World Bank study which showed that Nigeria had one of the most cumbersome systems of land administration in the world. Whereas in comparison to countries such as Sweden which had 1 procedural step for the transfer of interest in land, Nigeria on average (as each state differs) had some

14 procedural steps. In addition, the costs (both formal and informal) of obtaining Governor's consent (for example in Lagos the cost is about 15% of the value of the land) and the time in obtaining this have lead to the under utilization of land in mortgage finance.

Section 2

Proposed Constitutional Amendment and Amendment to the Land Use Act

The inadequacies raised by the Land Use Act and in particular the problems associated with the requirement for the consent of Governors in the alienation of the interest in land has led in the firstly to the proposed enactment of a Bill to amend the Land Use Act. The Bill placed before the National Assembly in April 2009 entitled

'An Act To Alter the Provisions of the Constitution of the Federal Republic of Nigeria by Amending the Land Use Act Cap L5 LFN 2004 of the and other Related Matters'

aims to amend the Land Use Act in order to abrogate not the totality of the Land Use Act itself but rather to remove only the sections which require the Governor's consent to the transfer of interest in land.

Section 5 of the Bill provides for the amendment of section 21 of the Act by deleting all the words after 'assignment', likewise section 6 of the Bill proposes the deletion of the 'mortgage, transfer of possession, sub-lease or otherwise' after the words 'assignment'.

In addition, a new sub-section is inserted into section 22 stating that 'the consent of the Governor shall not be required for the creation of a mortgage or sub-lease under this section.'

The effects of both amendments is to restrict the requirement for Governor's consent when alienating land by sub-lease, mortgage and transfer of possession. However, it should be noted that the proposed amendment does not seek to abrogate the need for Governor's consent in respect of assignment of the right of Occupancy. Thus if enacted the

consent would only be needed where there is an assignment is to take place.

Whilst the proposed amendments does address some of the issues in respect to the use of land especially in raising finance, in keeping the requirement for Governor's consent in relation to the assignment of the Right of Occupancy, the cumbersome nature of transfers of interest and the costs involved will still remain. Perhaps, this has been a compromise in obtaining the necessary approval through the National Assembly.

Challenges of the Amendment to the Land Use Act

It is at this juncture important to note the full title of the full title of the Act as stated above. The challenges facing amendment is the fact that the Land Use Act has been incorporated into the Constitution of the Federal Republic of Nigeria. Amendment it is argued may take one of two ways the first being the Amendment of the Constitution and the second being the amendment of the sections of the Act itself. It is clear that

the former method is more challenging and cannot be achieved easily or speedily as it would require the constitutional two third majority of each state house of assembly and other stiff constitutional requirements. The latter though simpler, as it would only require the normal passing of the Bill in the National Assembly, the constitutionality of the changes will however be called into question as the amendment could be looked upon as an amendment to the Constitution.

Whilst the proposed amendment to the Land Use Act is welcomed, it may however be argued the proposed amendment do not go far enough as they stand will have no real practical effect on or solve the issues complained about. The removal of Governor's consent will not in itself have any practical effect on time delay (which is the true albatross) as there will still be requirement to stamp and register transfers in title. Unless the recommendations of the Presidential Technical Committee on Land reform is adopted and the wholesale administration of land changes, all the

amendment will do is to remove one step out of the 14 procedural steps required for the transfer of land titles. This in itself will not have any profound effect on land administration nor will it cure the defects of time delay in registering and protecting titles to land. The banking sector will still be encumbered by the long delays of processing and stamping documents. At present it is not the fact that Governor's consent is in itself required (as consent is usually automatically given) but rather the attendant delays. Removing this requirement alone will have any substantial practical effect.

Whilst the amendments are a step in the right direction and have shown a willingness to grab the bull by the horns, a further limitation is the limitation of the removal of Governor's consent only in respect of mortgages, sub-leases and transfer of possession. As the amendment stands Governor's consent will still be required in respect of assignments of interests. There seems however, an illogicality to this approach and a lack of justification. Again, it would appear that the need for logic and

practicality has been sacrificed on the table of political compromise. It would appear that this approach is merely to placate the Governor's into agreeing the amendments as their consent will continue to be a source of revenue. Even despite that the fact that revenue will still be obtained from stamping and registration.

The amendments also ignore the potential practical negative effects. The consent requirement will have the effect of purchasers doing so very sub-leases rather than by assignment. As property is transferred a multiplicity of times, this will result in a multiplicity of sub-leases each merely being a day less than the former in order to retain the reversionary interest in the original allottee. This will mean the subsequent purchasers will have to deduce their root of title through the numerous sub-leases thus creating potential problem in the registration and conclusiveness of title. It would seem an inadvertent step back to the good old days of conveyancing rather than a step forward whereby the holder of the Certificate is guaranteed title.

The amended Act though fails to go far enough to remove the inadequacies of the Land Use Act. In this respect, it fails to address the issue of the Governor's power to revoke title. This creates further uncertainty in the system and undermines the confidence of the banking sector in the Certificate itself. It inadvertently increases the risk attached to holding the certificate and therefore increases the cost of collateralizing the asset.

Section 3

The Presidential Technical Committee on Land Reform

The inaugurated of the Presidential Technical Committee on Land Reform by the Yar adua administration in April 2009 was set up under its seven point agenda in order to proffer recommendation for the reform of the land administration especially in respect of registration of title as most areas still do not have registered titles.

The Committee Terms of Reference were as follows:

- 1) to collaborate and provide technical assistance to State and Local Governments to undertake land cadastral.
- 2) to determine individuals possessory rights using best practices and most appropriate technology to determine the process of identification of locations and registration of title.
- 3) to ensure that land cadastral boundaries and title holdings are demarcated in such a way that communities will be recognizable.
- 4) To encourage and assist State and Local Governments to establish an arbitration/adjudication mechanism for land ownership conflict resolution.
- 5) To make recommendations for the establishment of a National Depository for title land holdings

and record in all States of the Federation.

- 6) To make recommendations for the establishment of a mechanism for land valuation in both urban and rural areas in all parts of the Federation.
- 7) To make any other recommendations that will ensure effective, simplified, sustainable and successful land administration in Nigeria

Since its inauguration in 2009, the Committee as undertaken some substantial work but has perhaps been hampered by the enormosity of its task.

The Committee has undertaken a four pronged approach.

- 1) Firstly, it has sought to create an enlightenment and sensitization program whereby all stakeholders are informed of its role, its task and the need for reform of

the land management and tenure system.

The sensitization program embarked upon aims to use the media houses, state and local governments, traditional rulers to support the Committees work and the eventual land reformation. To this end the Committee as so far met with the likes of the national economic Council and local governments.

- 2) Secondly, it has sought to determine the technicality of the task of creating a cadastral survey in order to determine and identify the existing possessory rights of various lands.

One of the core responsibilities of the Committee is to ensure the proper demarcation and cadastralization of the land with the country. This role requires the enormous task of

creating a cadastral map of the country and detailing the present ownership of such land. Given that in most rural areas such cadastral mapping has never taken place and most land remains unregistered the task ahead for the Committee requires both field work of visiting each locality to document the land ownership and were necessary to resolve disputes that may arise. The other aspect requires the use of modern day technology such as satellite and aerial mapping and well as Geographic Informations Systems (GIS) mapping

- 3) Thirdly, it has embarked on a man power capacity building program in order to ensure that the technical capacity is available in order to achieve its task and;
- 4) Fourthly, it has established pilot projects in each of the

six geopolitical units of Nigeria in order to assess and evaluate the potential problems and issues that may arise in the reformation exercise.

In conclusion, the present on going land reforms in both the amendment of the Land Use Act and the proposed reforms by the Presidential Technical Committee on Lands Reforms aims to herald in a new era of land administration and management in Nigeria. The proposed changes are faced with a myriad of challenges ranging from the technical, lack of manpower and political inertia. The fact that though the Land Use (Amendment) Act was placed before the National Assembly in the year 2009, it has to date not seen the light of day. Such changes will be met with the difficulty of changes being made to the Constitution.

E. C. Osammor & Co
Suite E1 Bobsar Complex
Michika Street
Area 11, Garki, Abuja, Nigeria



+234 9 870 7595
enquiries@ecosammor.com
www.ecosammor.com

DISCLAIMER: Every effort is made to ensure the accuracy of information provided however, we do not accept any liability for any loss or damage incurred as a result of any person acting on the information. You are advised to seek proper legal advice before acting on any information herein.