CRITICAL EVALUATION OF LAND REFORMS IN NIGERIA

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ABSTRACT

The system of land holding predates the colonial era. It was a system by which lands were held by Families and Communities. Individual ownership of land was scarce then. Individual land at the time was only on the basis of allocation of land for farming purposes. Land was managed by traditional Rulers and Chiefs in such families. This was the land tenure system prior to the colonial era. During the Colonial era, land was needed for the effective and smooth running of the Colonial Administration. This gave rise to the need for acquisition of communal and family land. The lands were so acquired through the Treaty of Cession 1861 which was principal of all the Treaties signed on land between the Colonialists and Traditional chief in Nigeria. Others were the Land Proclamation Ordinance (1900), Land and Native Rights Act (1916), The Niger Lands Transfer Act (1916), The Public Land Acquisition Act (1917), Native Lands Acquisition Act (1917), The States Lands Act (1918), The Town and Country Planning Act (1947) and others. This work analyzes the effect of the Treaty and the above laws on ownership of land in Nigeria. The work adopts the doctrinal method of research and recommends the restoration of absolute land tenure system in favour of the native owners of the land and not in the diminutive form in which it is provided for in the current land regime in Nigeria.

Key words: Land, Ownership, Land Tenure System, Pre-colonial Era, Colonial Era, Post-colonial Era, Land Reforms

INTRODUCTION

This article critically evaluates the nature of land tenure system prior to the various reforms that occurred. The nature, application, functionality and effect of the said reforms viz-a-viz ownership of land as it applied to pre-reformation era. It would be shown that the main thrust of the reforms is to 'nationalize' the entire land comprised in the territory of Nigeria. The concept of nationalization of land in Nigeria as could be garnered from the operations of the various Treaties, Ordinances and Acts through which the said reformations were brought, is to achieve a singular goal, which is to centralize ownership of land and vest same on the Government.

It would be recalled that, there were regional laws enacted for the purpose of reforming land tenure from what used to be prior to the colonial era. For the Eastern region, there were acquisitions of land by Alien Law 1957, Land Instruments Registration Law 1963, Land Instrument Preparation Law 1963, and the Recovery of Premises Law 1963. In the Western

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Region, the most important laws were the Property and Conveyancing Law, Land Instruments Preparation Law, Land Instruments Registration Law, Administration of Estates Law, Public Lands Acquisition Law 1917, Native Lands Acquisition Law. In the Northern region, the following laws were made, Crown Lands Proclamation 1902, Lands and Native Rights Proclamation 1910, Land and Native Rights Ordinance 1916, The Land Tenure Law 1962 and The Lands Registration Law 1963. It is noteworthy, that the various states under these regions adopted the laws made by her respective regions upon the creation of the 36 States.

During the military regime in Nigeria, some Decrees and Edicts were promulgated.[2] However, the most prominent military Decree in the history of land law in Nigeria was the the Land Use Decree, 1978. This Decree was renamed an Act by virtue of Adaptation of Law (Re-designation of Decrees) Order of 1980.[3] The Act,[4] by virtue of the Constitution of the Federal Republic of Nigeria 1999 (as amended)[5] is now an integral part of the said Constitution.

All these enactments were said to have been made to unify ownership of land in Nigeria. It is commonly called Land Reforms. However, of all these laws, this article will center on the Land Use Act 1978, which is the latest law on land reforms in Nigeria today. This article will be done in three phases, viz; the land tenure system in the Pre-colonial era, the colonial era and the post-colonial era.

LAND TENURE SYSTEM IN THE PRE-COLONIAL NIGERIA

Thus, before the advent of colonial rule in 1891, every territory making up Nigeria was independent with peculiar Customary Law systems in place. Each of the territories had and operated its own land tenure system.[6] The land tenure system varied from place to place even within a locality. For the ancient Africa, land was the source of all material wealth.[7]

The Concept of Ownership of Land in the Pre-Colonial Nigeria

[2] The Public Lands Acquisition Decree, 1976 and the Land Perpetual Succession Decree, 1970.
[3] Adaptation of Laws Order; 1980 ss 1, 13.
[4] Land Use Act, 1978.
[5] CFRN 1999; s 315 (5).
[6] N Tobi, *Cases and Material on Nigeria Land Law* (Lagos: Mabrochi Books 1997).
[7] D G Barnsley, *Conveyancing Law and Practice* (3rd edn, Butterworths London; 1988) 3.

The concept of ownership of land was part of the land tenure system in ancient Nigeria. The concept had from time immemorial been part of Nigeria. However, in some cases in ancient Nigeria, the term was used in a loosed sense because land was owned by communities or families (as the case maybe). Individuals were merely allotted land for farming purpose, the reversion of which still belonged to the community or family. Ownership of land inures to an individual member of a family upon partitioning of the family land. Issues on partitioning shall be dealt with at the appropriate stage of this work.

Except as aforesaid, land generally belonged to the community or family. In *Amodu Tijani* v *Secretary Southern Nigeria*,[8] the court held that land belongs to the community, village and not to an individual. The court presumed that land belonged to the community. The presumption was therefore to be rebutted or negatived by a party who claims individual ownership of such land.

In the case of *Eze* v *Igiliegbe & Ors*[9] the court held that it was right to presume as a matter of customary law that land belongs to the community as a whole and that the onus was on the defendant to establish that his section had exclusive title to the exclusion of the entire community.

In the ancient Africa, the control and management of land was vested in the headmen, chiefs and traditional rulers. There was the practice of corporate management of communal land. The court in *Tijani's Case* [10] puts it thus,

> In every case, the chief or the headman of the village or community has charge of the land and in loose mode of speech is sometimes referred to as the owner. He is to some extent in the position of a trustee and as such holds the land for the benefit of the community.

It is important to state that the headmen who held land as trustees at the time were not trustees of the land in the strict sense of it as it applies under the Act[11] being in force now. Unlike under the Act, the title or reversionary or radical title does not vest in such headmen but in the community as a corporate entity. Therefore, it has been opined that the application of trusteeship analogy to the head of the communities at the time is inaccurate although the courts have continued to regard

[8] (1921) 2 AC 399.
[9] (1952) 14 WACA 61.
[10] Per Lord Haldane.
[11] Land Use Act Cap L5 LFN 2004.

the headmen as trustees. However, as aforesaid, their trusteeship is not practiced as it is under the Land Use Act being in force.

Modes of Acquisition of Title to Land in the Pre-Colonial Nigeria

Since this discourse centers on land reformation in Nigeria, there is need to briefly look at the various modes of acquisition of land in the Pre-colonial era in Nigeria.

1. By Deforestation

Ownership of land can be acquired by deforestation. This mode entails the entering into and deforesting a virgin land. It is one of the oldest ways of acquisition of land in the pre-colonial era in the territory now known as Nigeria. The nature of interest acquired through this mode is both equitable interest and legal estate. The deforester acquires absolute title over such land as in the case of *Chukweke* v *Nwankwo*.[12]

Albeit, this mode of acquisition of title to land was hitherto practiced in some localities as a recognized mode of acquisition of land. However, the question is, can such title still be absolute in the face of the Land Use Act being in force? The question will be answered as the article proceeds.

2. By First Settlement

This occurs where a family through their Ancestors settles first on a land. This mode of acquisition is complete by settling on the land upon entry and exercising acts of possession in and over the land. In *Ajala* v *Amodele & ors,*[13] the Supreme Court held that this mode seems to be the oldest means of acquiring title to land in Nigeria.[14] The fact was enunciated in the case of *Odofin* v *Ayoola* wherein the Supreme Court,[15] with approval, referred to the statement of the Privy Council in the case of *Stool of Abinabina* v *Chief Kojo Enjimadu,*[16] when it stated thus 'first settlement seems to be the oldest method of acquiring title to land'. On the issue of ownership over such land, Karibi-

[12] (1989) 6 SC198.
[13] (1971) NWLFR 127.
[14] H A Nnokam, *Practice and Procedure in Customary Courts; Annotation of Rivers State Customary Courts Law No. 3 2014 with Specific Reference to the Rivers State Customary Courts Rules 2011* (Hopinson Printing Press, 2020) 89.
[15] Per Oputa JSC, *Odofin v Ayoola.*
[16] (1952) 12 WACA 171.

Whyte JSC (as he then was) stated thus: 'the court has accepted original settlement on land as evidence of title and ownership to such land.' But again, as said in the case of deforestation viz-a-viz absolute ownership, can the ownership meant by the Supreme Court in the *Odofin's* case stand the test of the Land Use Act being in force? This work bears it out as it progresses.

3. Conquest

This is another mode of acquiring title to land in the pre-colonial era in Nigeria. It could be argued that this system is still being practiced in some localities in Nigeria today. An expanse of land belonging to no one may put two families or communities against each other in war. The victorious family or community acquires title to the land. By the decisions in cases, this mode is still being practiced.[17]

4.Partitioning of Family Land

This is another means through which title to land is acquired. Where a family partitions her land, the family is divested of the title in the land. The family will no longer be entitled to reversionary interest in the land. The individual member of the family becomes vested with the title over the land and all incidents of family ownership at this point become extinguished.[18]

LAND TENURE SYSTEM IN THE COLONIAL ERA IN NIGERIA

During the Colonial Administration in Nigeria there were Treaties, Ordinances and other laws. They were actually designed to suit the Colonial Imperialists. One of the Ordinances made was the Land Proclamation Ordinance 1900 which disregarded the principles of Native law and custom and provided that title to land could only be acquired through the British High Commissioner. The Ordinance was fashioned to eliminate the pre-colonial community and family ownership of land.[19]

[17] *Ajiboye v Ishiola* (2006) 13 NWLR (pt 988); *Jala & Ors v Jala & Ors* (20217) LPELR 43320; *Osayogie v edokpayi* (2014) LPELR 22661; *Majeologbe v Solarin* (2015) LPELR 25588.

[18] *Ikegbunam* v *Onwubuya* (2007) All FWLR (Pt 345) 379; *Akinropo* v *Yusuf* (2013) LPELR 2021; *Eruola* v *Ojo & Ors* (2014) LPELR 23102; *Olorunfemi* v *Asho* (2000) 2 NWLR (pt 643) 143; *Yusuf* v *Adama* (2010) 5 NWLR (pt 1188); *Oyadiji* v *Olaniyi* (2003) 5 NWLR (Pt 919); *Alafia* v *U Global Ventures Nigeria Ltd & Ors* (2016) LPELR 26665.

[19] N Udoekanem and others, 'Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectation [2014], *Journal of Environment and Earth Science* 4, 21.

In 1916, another law was made, that is, Land and Native Rights Act 1916. The Act put all the native lands in Northern Nigeria under the control of the Colonial Governor. Section 3 of the Act provides thus:

> all native lands and rights over same are hereby declared to be under the control and subject to the disposition of the Governor and shall be held and administered for the use and common benefit of the natives of Northern Nigeria and no title to the occupation and use of any such lands shall be valid without the consent of the Governor.

However, section 4 provides that 'The Governor in exercise of powers conferred upon him by this proclamation with respect to any land shall have regard to the native laws and customs existing in the district in which such land is situated.' The 1900 Ordinance[20] was such a crude and cruel law targeted against the Native Owners of land. The interest of the native people over land was indeed extinguished by the Ordinance. However, the 1916 law attempted to mitigate the harshness of the 1900 Ordinance by making the colonial Governor a trustee and a radical title holder of the lands in the Northern Nigeria, hence the provision, 'shall be held and administered for the use and common benefit of the natives of Northern Nigeria...'[21] However, the 2nd limb of the said section 3 brought the natives back to the whims and caprices of the colonial masters by the provision thus '... and no title to the occupation and use of any such lands shall be valid without the consent of the Governor.'

The current Land Use Act 1978 is fashioned in line with this 1916 law as under the current Act the Governors of the various States of the Federation hold the land in trust for the people. The management and control of all the land comprised in the territory of each State vest with them. They are the radical title holders of the land. The reversionary interest in the land belongs to them. Interest acquired in land prior to the coming into effect of the Act being in force in Nigeria is now being deemed acquired pursuant to the Land Use Act.[22] The native people are the people who acquired such interest in land.

[20] The Land Proclamation Ordinance 1990.
[21] Lands and Native Rights Act, 1916 s 3.
[22] (n.11).

Section 4 of the 1916 Act as discussed earlier purported to recognise the place of the natives in the management and administration of lands at the time. The section makes it 'mandatory' for the Colonial Governor to administer the lands with recourse and regard to the native laws and customs prevalent within the area where the land is situate. The current Act in force in Nigeria is a far cry from this little breathing space in favour of the natives.

The 1916 Act was repealed and replaced with the Native Lands Acquisition Act 1917 to enable the Colonial Administration acquire land for public purpose. As in the current Act, the 1917 Act empowered the Colonial Government towards compulsory acquisition of land. In 1918, another law was made, that is the State Lands Act 1918. This law was made to regulate the use, occupation and development of Crown (State) land. This Act of 1918 was made to designate some land as 'Crown land'. The Act restricted the sublease of the State land in the country. The effect of this Crown land menace particularly to the Diobu people of Port Harcourt is that they cannot even bury their dead on such land compulsorily designated as Crown land.

LAND TENURE SYSTEM IN THE POST COLONIAL NIGERIA

The Land Tenure Law of 1962 was made to replace the 1916 Lands and Native Rights Act by way of reform. However, the Land Tenure Law still contained basic provisions of the Act of 1916.[23] The Law[24] provided that all lands in each of the States in Northern Nigeria whether occupied or unoccupied are placed under the control and are subject to the disposition of the Minister in Charge of land matters who holds and administers the lands for the use and common benefits of the natives.

The 1962 Law is akin to the proverb, a bird which flew from the ground to the Anthill is still on the ground. The thread of emasculating the natives over their land was still running through the fabrics of the Nigerian laws up to the 1962 law. The 1916 Act purported to recognise the native ownership of land whilst the use and management were still under the control of the Colonial Governor. The 1962 law had also purported same whilst subjecting the citizens to the whims and caprices of the Minister in-charge of land matters.

[23] N Udoekanem and others, 'Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectation [2014] *Journal of Environment and Earth Science 41.*
[24] Land Tenure Law, 1962.

Under the 1962 law, Northern Nigerian citizens were merely granted right of occupancy for a limited term of years. An occupier of such land enjoyed exclusive rights to the land against all others except the Minister in-charge of lands. Lands were not alienated without the consent of the Minster. One factor was inherent in the said law; that is, at the determination or expiration of the term of years granted, the reversionary interest on the land vested in the said Minister including all the improvements on the land. This law of 1962[25] was repealed and replaced with the Land Use Decree (now Act) of 1978.

There is nothing exclusive about the 'exclusive right of occupancy' grantable under that law. An exclusive right of occupancy, good against all other persons except the Minister in-charge of lands cannot be said to be exclusive. Exclusivity is complete when rights of ownership are exercised and enjoyed without hindrance, except for regulatory purposes to ensure public orderliness and good neighbourliness. As in the pre-colonial era, communities and families (as the case may be) held land exclusively without hindrance except for the purposes aforesaid. The village Heads and Chiefs managed land for the people, but the reversion never vested in them personally. In fact, the management of land by them was in a generic sense. In actual practice, the lands were managed by the communities or families (as the case may be). In cases of partitioning during this era, the right enjoyed there from was not only possessory and occupational, it was on an absolute ownership basis. There was no reversionary interest whatsoever, except where the land was merely allotted for farming purpose.

Land Use Act 1978

The current law vests all land in the Territory of each State of the Federation in the Governor of the State who holds the lands in trust and administers it for the use and common benefit of all Nigerians.[26] The Act also empowers the Governor to grant statutory right of occupancy whether or not the land is situate in an urban Area.[27] Upon the grant of a Statutory right under sub-section 1, all existing rights to use and occupation of such land subject of the statutory right of occupancy granted shall be extinguished. The right of occupancy granted by the Governor is for exclusive

[25] Land Tenure Law 1968.
[26] LUA 1978, s 1.
[27] LUA 1978, s5(1)(a).

rights against all others, except the Governor. The maximum of the term of years grantable under the Act is 99 years subject to the payment of Ground Rent fixed by the Governor throughout the period of the occupancy. The Act prohibits any form of alienation of the land granted or even transfer of possession, mortgage, assignment and sub-lease without the consent and approval of the Governor of the State where the land is situate.[28] This prohibition also applies to customary right of occupancy granted by the Local Government Authorities over land situate in Non-urban Areas.[29] The Land Use Act, section 47 dealt a worse blow on the people. It provides thus;

> 1. This Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria and without prejudice to the generality of the foregoing no court shall have the jurisdiction to inquire into;
> a. any question concerning or pertaining to the vesting of all land in Governor in accordance with the provisions of this Act, or
> b. any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or
> c. any question concerning or pertaining to the right of a Local Government to grant customary right of occupancy under this Act.
> 2. No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of a compensation paid or to be paid under this Act.

The Land Use Act of Nigeria retained the vesting of the lands in the Governors of the States of Federation. The issues of vesting of land and reversionary interest as provided by the laws evaluated earlier had been critically ex-rayed. The Land Use Act is a bed fellow to the said laws.

The Land Use Act, section 1 does not vest the lands in the territory of a State of the Federation in the Governor in trust for the use and common benefit of the people of that State only, but all Nigerians. The application of this provision of the law could be seen in the acquisition of native lands in Rivers State and allocating same to non-rivers people. A typical example is the nature of allocation of land in Government Reserved Area (GRA). A Governor of a State wakes up one morning and decides to allocate land to a non-native in a Rural area of a State by section 5(1)(a) of the Act and by section 5(1)(b) of the Act, land granted on the basis of statutory right of

[28] LUA 1978, ss 21 & 22.
[29] Ibid.

occupancy in a non-urban area extinguishes all the rights of the natives which ever existed over such land.

This Act replicates the lack of exclusiveness of the ownership of land granted under the Land Tenure Law of 1962 applicable in the Northern Nigeria. What is exclusive about the right of occupancy (supposed ownership) being only good to others, except the Governor of such State. This falls short of the meaning of exclusiveness. It is good argument to say that the nature of interest in land created by the Act is leasehold interest transaction and nothing more. The rights of occupancy are granted for a maximum period of 99 years. There is even no content of ownership under the Act, much more absolute ownership as it was in the pre-colonial era. Reversionary interest in the lands belongs to the Governors said to be the radical title holders of the land from whom consent must be obtained before the holder of the right of occupancy can deal with the land as foresaid.[30] The Governors of the States are landlords of the land. They are lessors to the lease transaction. They reserve the rights of revocation of the right of occupancy if ground rent is not paid and upon other bad behaviour on the land.

The Land Use Act, section 47 makes the matters contained therein non-justiciable. Be that as it may, there exist some judicial authorities that have nullified the section for being inconsistent with the provisions of the Constitution. Nothing qualifies more as a draconian and tyrannical legislation than this; even matters as critical as the quantum of compensation payable upon compulsory acquisition of land cannot be ventilated in courts. By the said provision of the Land Use Act, section 47, the Land Use Act is not even subject to the Constitution but the reverse is the case.

CONCLUSION

What this article achieved is to highlight the core areas of the reforms and the effect of same on natives against the backdrop of land ownership in Nigeria. It was hinted quite early in the work that the only agendum of the land reforms was to nationalize and centralize land for use by government Authorities. This agendum, much as it is desirable and necessary for Government to have unhindered access to land for development, the said agendum went far beyond achieving this to the extent of removing the freehold interest the people enjoyed on lands.

[30] LUA 1978, ss 21, 22.

In the pre-colonial era as evaluated in the work, it is clear that land meant everything to the natives so much so that the management and control of land were not left in the hands of any individual but communities and families. It was so because there is no gain saying the effect of leaving the control and management of lands in the hands of individual members of the communities or families. Howbeit, the moment the lands were partitioned and given to individual members of the community or family; the individuals exercised full rights of ownership over such land. The nature of the holding at the time was absolute. It was a freehold interest in land and an interest in fee simple absolute.

Nigerians in the colonial era suffered the implementation of the said single agendum talked about earlier. It has been reviewed in the body of the work that the entire laws made in the form of land law reforms in Nigeria in the colonial era all achieved a single purpose, to wit: divesting the native of the absolute ownership of their land

RECOMMENDATIONS

1. There is need to adopt customary land tenure system and the establishment of customary land secretariat in Nigeria. The essence of the proposed customary land secretariat will be to regulate and control the use and management of communal land.
2. On the matter of non-justiciablity of the quantum of compensation payable upon compulsorily acquiring land for public purpose by Government, our courts are called upon to always apply the doctrine of *solatium* (the affectionate attachment the people have to their land) in handling matters relating to acquisition of land, particularly to strike down this section of the Act (section 47) for being so uncivilized, to say the least.
3. The position that not even the provisions of the Nigerian constitution can override the provisions of the Act is very dangerous. The constitution is the *grundnorm.* So why make it subject to the Act. Legal activism is needed here.

Section 5 of the Act also should be challenged in court to stop the Governors from further granting statutory right of occupancy in non-urban lands. The Rivers State Designation of Urban Areas Order of 1987 had already designated certain areas of land as urban, statutory rights of occupancy should centre only