

AMENDING THE LAND USE ACT: TIME FOR REFORM

I most heartily thank the organisers of this very important workshop for finding me worthy to deliver a paper on "Amending the Land Use Act". The Act, which is at the heart of Land Reform in Nigeria, is arguably the most important Bill currently before the National Assembly for review.

With a population of over 140 million and a huge housing deficit of over 15million units, Nigeria is in dire need of Land Reform that would jump-start every facet of its economic life.

The opening up of the mortgage sector in Nigeria would require a true transformation of its land laws to reflect the new realities in this present age.

The nexus between Land Reform the Mortgage Market and Housing Finance cannot be over-emphasized as an efficient, transparent and reliable Land Tenurial System would act as a catalyst for increased economic activity and encourage serious investors particularly foreign investors with the attendant effect of increased foreign investments, which would ultimately enable us to compete favorably with other global markets.

Nigeria's quest rapid economic development towards the attainment of *Vision 2020*, which essentially is to transform Nigeria into one of the key 20 economies in the world by the year 2020, will be greatly facilitated if the nation embarks on a transformation of its land laws by ensuring the optimal utilisation of land, which is its key strategic resource.

Land is the foundation of shelter, food and employment. It can rightly be said that land is inseparable from the concept of society.

Land Tenurial System Before the Land Use Act

Prior to the enactment of the Land Use Act in 1978, there were three main sources of land law: Customary Law, English received law and local legislation. There was also a duality of

Land Use System in the southern and northern parts of the country.

The parliament of the then northern Nigeria has passed the Land Tenure Law in 1962, which governed all interest affecting land. The Land Tenure Law vested all land in the governor who was to hold the land in trust for the people and only rights of occupancy could be granted to the people. The consent of the governor was required before any alienation of interest in land could take place.

In the then Southern Nigeria, however; customary system of land tenure governed land interest and was owned by communities, families and individuals in freehold. Land was acquired either by inheritance, first settlement, conveyance, gift, outright purchase or long possession. There were also crown lands which were acquired by the British Crown by virtue of treaty, cession, convention or agreement. When Nigeria attained independence, such crown land became known as state land.

This was the position of Nigeria's Land Tenurial System before the Land Use Act came into force. One may, therefore, wonder what informed the enactment of the Act?

The then Head of state General Olusegun Obasanjo, in a broadcast which introduced the Act to the nation stated inter alia: "The main purpose of this decree is to make land for development available to all including individuals, corporate bodies, institution and governments... Fast economic and social development at all levels and in parts of the country is our main consideration"

The Land Use Act was enacted in 1978 to address the following concerns:

- To remove the bitter controversies resulting, at times in loss of lives and limbs, which and was known to be generating;
- To streamline and simplify the management and ownership of land in the country;

- To assist the citizenry, irrespective of his social status, to realise his ambition and aspiration of owning the place where he and his family will live a secure and peaceful life;
- To enable the government bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular use.

The resultant effect of the Act was;

- It converted the interests of allodial owners under customary law in Southern Nigeria to rights of occupancy;
- It completely extinguished received English land tenure system of freehold;
- It unified the law relating to land tenure in Nigeria
- It is arguable that the Military Government in 1978 was well intentioned in promulgating the Act. Nigeria attained independence in 1960 had just come out of a war in 1970 and since most of Nigeria's land was under customary land tenure, the government's desire for fast development of the country must have informed the enactment of the Act.

The challenge and difficulties of the optimal utilisation of land for wealth creation that was prevalent in 1978 is still with us 31years after.

His Excellency President Umaru Musa Yar'Adua in appreciation of this continued difficulty has duly acknowledged Land Reform as being central to his seven point agenda.

The President recently forwarded a Bill to the National Assembly proposing to amend Sections 5,7,15,21,22,23&28 of the Land Use Act by vesting the requirement of Governor's consent to assignment only with the sole purpose of making land a much more easily convertible asset that could be used to facilitate increased investment in agriculture and strengthen the mortgage industry.

This Presidential initiative is indeed a watershed development and must be applauded.

Critical Issues in the Act Affecting Optimal Use of Land

- Vesting of all land in the Governor;
- Requirement of Governor' consent for transactions;
- Modalities for establishment of Land Use and Allocation Committee;
- Essence of Certificate of Occupancy;
- Process of revocation and compensation;
- Ouster of court jurisdiction;
- Constitutional requirement for amendment.

Vesting of all land in the governor

Section 1 vested all land in the governor to hold such land in trust for the people.

This speaker submits that the expropriation of individual ownership of land as prescribed by the Land Use Act has no place in this present day and should be expunged as it certainly does not conform with democratic norms and ideals.

It is important to note that in spite of the trust concept envisaged by the Act in Section 1, there is nowhere in the Act where the Governor can be held to account for his action or inaction neither is there any solution for the people to take remedial action if there is an abuse of his "trusteeship".

With the benefit of hindsight, the then military government was also naive to have assumed that the government would be a 'good man' capable of doing no wrong and in the process, vested him with draconian powers to virtually dispense all manner of favor to whomever he wishes or to negatively use his powers to affect anyone who he is not well disposed to.

Investors cannot be comfortable with the fact that one person(in this case the Governor) can determine the fate of the entire citizens of the state on such a most basic resource which is required daily for shelter, business, school, farming among others.

Requirement For Governors Consent

Section 5,6,7,12,15,21,22,23,24,28 restrict the alienation of a right of occupancy or any part thereof by sale, mortgage, transfer of possession, sub-lease or bequest or otherwise howsoever without the prior consent of the Governor.

As seen from the consent provision of the Act, this requirement has impacted particularly negatively on assignments and mortgages as it usually requires over three months to obtain Governor's consent. In Lagos State, to obtain Governor's consent to a mortgage and its registration, the application goes through 17 stages while assignment goes through 20 stages. The cost of obtaining Governor's consent to a mortgage is about 10% of the loan while the cost of obtaining Governor's consent to an assignment is about 15% of the value of the property. The various states have similar cost and procedure requirements.

This scenario has made land to be undesirable by financial institutions as a form of security as the institutions themselves find that the cost of obtaining consent to the mortgage cannot be transferred to the mortgagor and they sometimes opt to hold equitable interest by not registering the legal mortgage, thereby become susceptible to third party interest which may arise as a result of non-registration of their interest.

The same can also be said for the other interests requiring Governor's consent under the Act. It must be said that the consent of the Governor should not be required before any alienation of an interest in land can take place.

Modalities For Establishment Of Land Use And Allocation Committee

Section 2 establishes a Land Use and Allocation Committee in each state which shall have the responsibility for advising the Governor on resettlement of persons affected by revocation of rights of occupancy on the ground of overriding public interest and determining disputes as to the compensation payable.

Painfully, the Act further gives the Governor ultimate control and authority as provided in Section 2 of the Act to appoint members of the Land Use and Allocation Committee.

This Speaker is accordingly of the strong view that to ensure checks and balances, members appointed by the governor into the Land Use and Allocation Committee should be confirmed by the House of Assembly. It must be further provided that where a party is disaffected by the resolution of his matter, he reserves the right to apply to the High Court.

Modalities for Designating of Urban/Non-Urban Area

Section 3 provides that the governor may designate any area of land in the state an urban area. The Act has introduced two right of occupancy. The right of occupancy granted by the governor is described as a statutory right of occupancy which he is empowered to grant any person for all purposes. Section 6 empowers the local councils to grant a customary right of occupancy over land within the non-urban area of its jurisdiction.

A Governor can abuse this provision by designating a non-urban area an urban area for the sole purpose of granting a statutory right of occupancy. Lagos State was declared an urban area in 1981. This provision has impacted negatively on the reliability of customary certificate of occupancy issued by the local council.

Essence Of Certificate Of Occupancy

Section 9 provides that the governor when granting a statutory right of occupancy shall issue a Certificate of Occupancy as evidence of a right of occupancy. The Certificate of Occupancy evidencing a right occupancy is a most unreliable title. This conclusion is based on the following observations:

There are two types of Certificate of Occupancy issued by the Governor.

- State certificate of occupancy issued in respect of state schemes and public acquired land; and
- Private certificate of occupancy issued in respect of privately acquired land evidenced by purchase receipt.

In spite of S.9(1), S.34(3), S.34(9) and S.36(3) which require the Governor to be satisfied that the applicant is entitled to a right of occupancy in the land before issuing a Certificate of Occupancy, there is no provision for a thorough investigation of

the claim of the applicant. In Lagos state, the Governor usually accept receipts issued by a family member and supported by a survey plan as evidence of title and only advertisements are taken out before issuance of the certificate of occupancy by the governor.

To ensure that a Certificate of Occupancy issued with respect to a statutory or customary right of occupancy is made more reliable, a land arbitration panel should be established which would look at claims by applicants desirous of establishing their claims.

Process Of Revocation And Compensation

Section 28 deals with the power of Governor to revoke right of occupancy while Section 29 deals with compensation. The grounds for revocation can be summarised under three broad headlines :

- Section 29(2) provides for revocation where the holder, whether of statutory right or customary right, is in breach of the provision of the Act or of the provisions contained in a Certificate of Occupancy.
- Revocation also applies where an individual held more than half a hectare of undeveloped land within an urban area before the commencement of the Act, he must after the commencement of the Act, forfeit the excess to the state as provided in Section 34(5) and Section 34(6)

In both cases mentioned, no compensation is payable to the owner as it is treated as a forfeiture of the individual interest. We are, however, concerned with revocation made on the grounds of overriding public interest which is subjected to the payment of compensation.

The provision relating to revocation of rights of occupancy on grounds of overriding public interest needs to be made more transparent. Every information and all the studies that relate to the scope of the project for which the land is required should be scrutinized and available for further public debate by the Land Use and Allocation Committee, such that the Governor's request can be rejected if it does not meet the condition for overriding

public interest. It should also be provided that where the project is no longer undertaken, the land would revert to the original holders.

The compensation provision under the Act is grossly inadequate and can be described as unjust. Under the Land Tenure Law, compensation was paid for the value of the unexhausted improvement and also for the inconvenience caused by the disturbance and disputes were allowed to be referred to the High Court.

The Public Lands Acquisition Decree of 1976 also provided for compensation to be paid for the land and the unexhausted improvements thereon. Curiously, the Land Use Act promulgated much later provided that compensation is payable only on unexhausted improvements on land and no value and compensation is attached to the land itself.

In many urban areas, the land is more valuable than the improvements thereon and the purpose of compensation must be to ensure that the person being disposed is not put in a worse position than he was prior to the revocation.

Section 30 of the Act provides that where there arises any dispute as to the amount of compensation calculated in accordance with the provision of Section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

Following Section 47(2), it is clear that the Land Use and Allocation Committee is the final arbiter on this matter. The Land Use and Allocation Committee as currently constituted is not a distinct body independent of the Governor as the member are exclusively appointed by him.

A holder/occupier must be the right to ask the court to inquire into the question of adequacy of compensation paid. It must be further provided that a mortgage should be included in the description of a holder in Section 51 of the Act so as to be entitled to the compensation where property in question has been mortgaged.

Ouster Of Court Jurisdiction

Section 47 ousts the jurisdiction of the court into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act.

It is quite shocking that the courts are excluded from inquiring into any act of the Governor pertaining to a grant of statutory right of occupancy in accordance with the provision of the Act or questions relating to the adequacy of compensation paid to a holder or occupier. This as we have stated earlier is inconsistent with democratic norms and ideals.

Constitutional Requirement For Amendment

The insertion of the Land Use Act in the Constitution by virtue of S.315(5) of the 1999 Constitution requiring that a process of amendment of the Act must also be the same as that of the constitution is most unfortunate.

Land is a life asset that requires to be tinkered with regularly to bring it in conformity with present day realities. The constitution requirement of two-third approval of the members of the National Assembly alongside two-thirds of the State Houses of Assembly before any amendment of the Land Use Act should be expunged. The Act should be immediately removed from the Constitution.

Conclusion

It, however, appears that an abrogation of the Act might have a lot of unintended consequences due to several acts which have been taken by the Governors and various individuals and government organisation in furtherance of the provisions of the Act.

It is further acknowledged that the above might lead to a floodgate of litigation on otherwise settled issues, which might ultimately become economically injurious to the country.

In the light of this consideration, it appears the practical approach would be to turn the Act and seek an amendment of the above mentioned sections in order to ensure that the Act wears a human face and is consistent with democratic norms and ideals.

The key amendments sought, therefore are:

- Consent of the governor should only be required to assignment;
- A flat administrative charge should be charged for proceeding governor consent;
- The procedure for obtaining consent should be simplified and timeous;
- Land Registry Divisions should be created in Local Governments;
- The members of the Land Use and Allocation Committee appointed by the Governor should be confirmed by the House of Assembly;
- A Land Arbitration Panel should be established in all the states to look into claims relating to unregistered title holders;
- A geographical information system to digitally map land in each state of the country should be put in place;
- The Act should be removed from the Constitution;
- The demarcation of urban and non urban areas should be vigorously enforced to avoid haphazard implementation;
- The right of anyone dissatisfied with the Act of the Governor to apply to the High Court should not be abrogated;
- Revocation of the land for overriding public interest must be transparent and subject to public scrutiny;
- Compensation must not be limited to unexhausted improvement. The value of the land and market value of the improvement should be taken into consideration while arriving at compensation payable
- Registration of title or any interest affecting land must be made compulsory.

If the proposed amendments are implemented, exploitation of our land to its fullest potential would be realized and a new vista of economic activity will be unleashed in the country with a great boom in the mortgage market and housing finance.

It would also lead to an upsurge in government revenues as the various land registries across the country will become a beehive of activities resulting from fees paid to conduct searches,

issuance of certified true copies being made of titles registered, property taxes, amongst others.

Furthermore, it would generate a database on land transaction which would greatly assist in providing information to enquires from the courts and other governmental agencies.

Also, the states would be in a better position to effectively utilize their respective Town and Country Planning Laws.

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