PROMOTING COMMERCIAL AGRICULTURE IN NIGERIA THROUGH A REFORM OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS

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I. INTRODUCTION

Agriculture was the centrepiece of Nigeria's economy in the 1960s and early 1970s with the country being the leading exporter of groundnuts and having appreciable share of the world palm oil and cocoa exports.[1] Apart from providing food for the teeming population and raw materials for industry, employment for the poverty-stricken masses and the derivation of revenue from exports, agriculture became a major source of investment with high-income yields for local and foreign entrepreneurs. With 68 million hectares of arable land, fresh water resources of about 12 million hectares and ecological diversity enabling the country to produce a wide variety of crops and livestock, forestry and fisheries products,[2] the country had the great potential of harnessing her vast natural resources for sustainable agricultural development.

The exploration and discovery of crude oil was the turning point in the performance of commercial agriculture and its contribution to the country's Gross Domestic Product (GDP).[3] The windfall from 'oil money' with the attendant

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1 As at 1961, Nigeria was the leading exporter of groundnut with a world share of 42 per cent. The country had 27 per cent of the world's palm oil export; 18 per cent of cocoa and 1.4 per cent of cotton as the major West African cotton exporter: Federal Ministry of Agriculture and Rural Development (FMARD) 2011, 'Agriculture Transformation Agenda', cited in M. Chikaire et al., 'Land Tenure Reform: A Vehicle for Achieving Agricultural Transformation Agenda in Nigeria', 2 (9) *Merit Research Journal of Agricultural Sciences* (2014): 114, at 115.

2 FGN, National Food Security Programme, Federal Government of Nigeria, Abuja (2008).

3 According to the National Bureau of Statistics, the contribution of agriculture to the country's GDP was 38.2 per cent in 2012. See National Bureau of Statistics, Gross Domestic Product for Nigeria (2012), online http//nigerianstat.gov.ng/nbslibrary/economic-statistics/gross-domestic-products (accessed 17 June 2016).

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negative consequences,[4] the re-directed focus of government in maximising crude oil production to the neglect of agricultural development and the dwindling political will in promoting agriculture and agro-allied industries, consequently led to low productivity in agriculture over the years. The National Food Security Programme document,[5] which contains the recent policy of the federal government on the state of the nation's agriculture, provides that although 'agriculture remains a key component of the country's economy currently contributing about 40.0% of the GDP and employing about 70.0% of the active population, the sector has significantly underperformed its potential.'[6]

The downturn in the oil sector portends great dangers for sustainable national economic development, leaving agriculture as a potent option for a country with vast arable lands and rich aquatic resources. Factors responsible for the low level of productivity have been identified as an inefficient system of land tenure, problems of access to land in appreciable quantity for commercial agriculture, poor irrigation systems, a lack of sufficient focus on biotechnology, poor credit facilities to motivate investment in the sector, and weak legal and institutional frameworks in enhancing sustainable agriculture, among others.

This article examines the efficacy of the extant legal and institutional frameworks in addressing the challenges that have stifled the agricultural sector in the last couple of decades and suggests reforms with a view to promoting sustainable commercial agriculture, fostering food security, reducing poverty levels, ensuring increased investment in the sector and boosting revenue generation for the country.

II. LAW, POLICY AND AGRICULTURE

Many African[7] and Asian[8] countries have made significant progress in the process of agricultural transformation. The general policies engendered in the agricultural sector from the late twentieth century expressed through pieces of legislation have been influenced by the need for food security, the alleviation of poverty through enhanced revenue, the provision of employment and rural development.

In Nigeria, as far back as 1976, 'Operation Feed the Nation' was launched by the then Head of State, General Olusegun Obasanjo, with the aim of encouraging self-sufficiency in food production and participation in agricultural production.[9]

4 These include, among others, monetisation of the economy with close to zero productivity in other sectors; rural–urban migration with consequent unemployment; incessant pressure on infrastructure and the emergence and proliferation of urban slums; encouragement and promotion of official corruption in government including the oil sector and external manipulation of the economy.

5 See *supra*, note 2.

6 *Ibid.*

7 Among others, Côte d'Ivoire, Ghana, Mali, Burkina Faso, Kenya, Tanzania, South Africa, Botswana and Rwanda are prominent.

8 For example, Indonesia, India, Malaysia.

9 O. Ajala, 'Evolution of Agricultural Policies and Laws', in R. T. Ako and D. S. Olawuyi (eds), *Food and Agricultural Law: Readings on Sustainable Agriculture and the Law in Nigeria* (Afe Babalola University, Ado Ekiti (ABUAD), Nigeria, 2015): 12, at 15.

Commercial banks were to ensure that 6 per cent of the total loan disbursed was allocated to the agricultural sector; 50,000 tons of fertilisers at highly subsidised prices were made available to farmers and feeder roads were constructed linking rural to urban areas to facilitate the transportation of agricultural products.[10] The country also launched the rural banking and agricultural credit guarantee schemes, established agricultural commodity marketing and pricing boards and promulgated the land use policy. An agricultural extension and technology transfer policy, and input supply and distribution policy, and an agricultural research policy 'aimed at co-ordination and harmonisation of agricultural research and extension linkage'[11] were also put in place. A water resources and irrigation policy was achieved through the establishment of eleven River Basin Development Authorities, agricultural cooperatives policy and agricultural mechanisation policy.[12] However, laudable as these policies were, there were flaws in their planning and implementation.[13]

There was the Structural Adjustment Programme (SAP) (1980–9) introduced at the insistence of the International Monetary Fund (IMF) to tackle the problem of economic instability with the central focus of restoring the agricultural sector to the level it was before the oil boom. In particular, it was to transform agriculture from the peasant level to large-scale production 'in order to increase its contributions to the GDP while using it as a tool for employment creation'.[14] In addition to the inauguration of the Green Revolution policy, the government also embarked on the creation of several agricultural research institutes[15] with the aim of increasing agricultural research and encouraging the study of agriculture by the youth of the country.[16]

The post-SAP era witnessed a decline in the volume of export crops as a result of a lack of an efficient and focused implementation of the policies introduced. Various other policies with increased agricultural productivity for exports, a reduction in the importation of certain food items and the formulation and

10 *Ibid.*, at 16.

11 *Ibid.*

12 D. Ugwu and I. Kanu, 'Effects of Agricultural Reforms on the Agricultural Sector in Nigeria', 4 *Journal of African Studies and Development* (2011): 2, at 51.

13 It is said that 'during the planning process, such issues as introduction of mechanised farming, food processing and preservative techniques, irrigation farming as well as finance for farmers were not considered'. See G. Nwaobi, *An Evaluation of Post Independence Agricultural Policies in Relation to Economic Development in Nigeria (1960–1987)* (Nigerian Quantitative Economic Research Bureau, 2005), available at: http:ideas.respec.org/p/wpa/wuwpd/0501001.html (last accessed 11 April 2016).

14 Ajala, *supra*, note 9, at 17.

15 Institutes such as the National Cereal Research Institute, the National Agricultural Extension and Research Liaison Service, the Nigerian Institute of Oceanography and Marine Research, the Veterinary Research Institute, the Cocoa Research Institute of Nigeria, the Forestry Research Institute of Nigeria and the Rubber Institute of Nigeria were established with the aim of increasing agricultural research and encourage the study of agriculture by the youth. See P. Sanyal, and S. Babu, *Policy Benchmarking and Tracking the Agricultural Policy Environment in Nigeria (2010)*, Nigeria International Food Policy Research Institute (IFPRI) Nigeria Strategy Support Program (NSSP) Report No. NSSP 005.

16 Sanyal and Babu, *supra*, note 15.

implementation of initiatives to drive the economy were put in place between1990 and 2003.[17]

As part of a government initiative to reduce poverty by 50 per cent by the year 2015, the National Economic Empowerment and Development Strategies (NEEDS) initiative was introduced in 2003. The initiative which gave priority to agriculture and peasant farmers was meant as a medium-term strategy by the federal, state and local government. NEEDS identified the need for private sector participation and the constraints inhibiting such participation with a view to tackling them. Among other initiatives, NEEDS developed new agricultural policies based on targets set[18] in order to achieve the effective implementation of an export-driven agricultural sector as well as an increase in the cultivation of arable land through private sector participation, using adequate incentive schemes.

The vision 20:2020, following global concerns, has incited government efforts in the direction of land and major institutional reforms as steps towards agrarian/agricultural and rural development. To this end, a Presidential Technical Committee on land reform was set up at the federal level to undertake reform of the land tenure situation in the country following from the various problems emanating from the Land Use Act 1978.[19]

The formulation of the Nigerian Agricultural Transformation Agenda (NATA)[20] to revitalise the agricultural sector is the high mark of our government policies. The vision in the transformation strategy is to achieve a hunger-free Nigeria through an agricultural sector that drives income growth, accelerates achievement of food and nutritional security, generates employment and transforms Nigeria into a leading player in global food markets to grow wealth for millions of farmers.[21]

At the federal and state levels, there are laws[22] meant to foster sustainable agriculture and boost productivity. These laws border on land use

17 *Ibid.*

18 For a catalogue of some of the targets set, see the NEEDS framework in *National Planning Commission, Nigeria: National Economic Empowerment and Development Strategy* (National Planning Commission, Federal Secretariat, Abuja, 2004): 35–87.

19 Cap L5 LFN 2010. See presentation made at the inauguration of the Presidential Technical Committee on the Reform of the Land Use Act in 2009 by A. Mabogunje, *Land Reform in Nigeria: Progress, Policies and Prospect* (Law Reform Publications, Abuja, 2009). The reform sets out to rectify a situation where pre-existing possessory titles are ignored while providing registrable titles to all land owners in the country.

20 Federal Ministry of Agriculture and Rural Development (FMARD), *Agricultural Transformation Agenda*, Nigeria (2011): 7.

21 Chikaire et al., *supra*, note 1, at 117.

22 The plethora of legislation on agriculture include the Land Use Act 1978, Cap L5 LFN 2010; the Endangered Species (Control of International Trade and Traffic) Act, Cap E9 LFN 2004; the National Crop Varieties and Livestock Breeds (Registration, etc.) Act, Cap N27 LFN 2010; the Sea Fisheries Act, Cap S4 LFN 2004; the River Basins Development Authorities Act No. 35 1987; the National Agricultural Seeds Act No. 72 1992; the National Agricultural Land Development Authority Act, Cap N4 LFN 2010; the National Seeds Act, Cap N5 LFN 2010; the National Centre for Agricultural Mechanisation Act, Cap N13 LFN 2010; the National Fertiliser Board Act, Cap N39 LFN 2010.

and management, agricultural sustainability, credit facility for farmers and environmental protection to enhance productivity.[23]

The robustness of the various laws and policies in existence and the targets set by them notwithstanding, sustainable agriculture and productivity still elude Nigeria, and many factors have been responsible for this. In the first place, the piecemeal approach to legislation in the agricultural sector with laws that are mostly uncoordinated and sometimes duplicating responsibilities for agencies, often leads to inefficiency within the system.[24] Non-harmonisation of the various laws creates challenges with regard to implementation, resulting in ineffective laws.[25] Buck passing between different agencies complicates enforcement of these laws and provides an avenue for non-compliance. Whereas the main objective of these laws and policies is to encourage private sector participation in the agricultural sector, government agencies still dominate all aspects of agricultural productivity making it difficult for private sector participation to thrive.[26]

Other factors identified for the failure of laws and policies of government to stimulate agricultural productivity have been identified as 'inadequate policy co-ordination, poor implementation of policies as well as lack of transparency during the planning and implementation of the policies'.[27] Sometimes, legal provisions do not coincide with government policies. For example, while the macroeconomic policies of government have been identified as market liberalisation and private sector participation, most of the laws are not known to favour private sector participation in agricultural production.[28] Corruption and an inefficient judicial system are also known to be impediments to implementation and/or enforcement of laws in the agricultural sector,[29] while weak political will to actualise the main objectives of the various existing Laws cannot be ruled out, as successive administrations persistently jettisoned the policies of previous administrations, substituting new policies for old without justification.

III. LAND LAW AND AGRICULTURE

Notable among the various pieces of legislation on agriculture[30] are the country's land laws. These laws form the bedrock of agricultural productivity as well as the basis for all economic activities and development.[31] But to what extent have the

23 See *supra*, note 22.
24 Ajala, *supra*, note 9, at 25. Example has been cited of the National Agricultural Seed Act which runs parallel to the Crop Varieties and Livestock Breeds Act.
25 *Ibid.*
26 *Ibid*., at 22.
27 *Ibid.*
28 *Ibid*., at 26.
29 United States Department of State, Country Reports on Human Rights Practices for 2011 – Nigeria (2012), online: http://www.state.gov/j/drl/rls/hrrpt/2011humanrightsreport/wrappers (accessed 16 February 2016).
30 See *supra*, note 22.
31 Ajala, *supra*, note 9, at 22.

extant land laws in Nigeria boosted access to land, assured security of tenure and efficacy of title to land? How has our land tenure system encouraged investments in agriculture and to what extent is land as an asset an attractive security to prospective creditors willing to lend for agricultural purposes?

A. Land Tenure and Agricultural Transformation

Land tenure reforms in many parts of the world can be seen as a vehicle for achieving agrarian transformation. It is said[32] that:

> land reform in most developing economies is linked to and interrelated with agrarian/agricultural and rural development. This is so because the bulk of the population that reside in rural and peri-urban areas and who engage in primary production depend almost exclusively on availability of land in whatever form this may be required.

However, while it is the case that about 80 per cent of the land is suitable for agriculture,[33] its sustainable use is being hampered by ambiguous land administration and regulation. It is observed[34] that land use regulation and administration are unsustainable because both undermine security of land use or ownership, deprive the landowner's access to land and restrict access to credit.

B. The Pre-Land Use Act Position

The position of our land tenure system before the Land Use Act 1978 depicted a general dichotomy between North and South. In the South, individual ownership was generally unknown; land belonged to families, clans and communities with headship of the institutions holding the land in trust for members.[35] There was huge fragmentation of land meant for use by members and alienation in any form was made subject to consent by the holding institution.[36] In the North, the Land Tenure Law[37] streamlined the system of landholding by granting occupancy rights in the form of leasehold interest to natives and non-natives with restrictions on the transfer of interest.[38]

Customary practices in Southern Nigeria were found inimical to development as they inhibited government's access to land. The fragmentation of land and traditional subsistence farming was fast becoming out of step with the economic realities of modern times with negative impact on commercial agriculture. The

32 Chikaire et al., *supra*, note 1, at 114.

33 USAID, *USAID Country Profile: Property Rights and Resource Governance in Nigeria* (2010), online at http/landise.landesa.org/record/1326 (accessed 19 March 2016).

34 B. Ihugba, 'Resolution of Farmland Disputes and Agricultural Development: An Examination of the Judicial System in Settlement of Farm Disputes', in Ako and Olawuyi, *supra*, note 9, at 49.

35 *Amodu Tijani* v. *Secretary, Southern Nigeria* [1921] AC 399.

36 *Ekpendu* v. *Erika* [1959] 4FSC 79; *Lukan* v. *Ogunsusi* [1972] 1 All NLR (Pt.2) 41; *Ojoh* v. *Kamalu* [2005] 18 NWLR (Pt 958) 523.

37 Cap 59 Laws of Northern Nigeria, 1963.

38 *Ibid.*, sections 27, 28.

need for a new land tenure regime became imminent in the face of non-availability of land for agricultural and industrial purposes and the need for equitable distribution of land for abundant food production and poverty alleviation.

C. The Land Use Act Regime

Consequently, the Land Use Act[39] was enacted vesting radical title to the parcels of land within the territory of each state in the governor of that state[40] to be held in trust for the use and common benefit of all Nigerians.[41] Individual unlimited land rights were streamlined and converted to rights of occupancy.[42] A right of occupancy[43] may not be alienated without the requisite consent[44] and land may be appropriated for overriding public interest which includes public purpose of which requirement for agricultural development is part.[45] The Act is entrenched in the Constitution[46] making its amendment susceptible to the stiff constitutional amendment provisions.[47]

There are known pitfalls in the provisions of the Act which are inimical to agricultural development. Access to land under the Act is not guaranteed for, although the governor or local government has the power to make a grant, there is no duty to make such grant even where conditions for the grant have been fulfilled. Foreign investors are not encouraged to access land for agricultural purposes as a result of the discriminatory policy of the Act in restricting use and benefit of the land to Nigerians.[48]

There are no known guidelines for the exercise of power to grant by the governor and there is nothing to stop the governor from exercising the power to further oil exploration and production to the detriment of agriculture as has been the case in the Niger Delta region.

Customary land rights upon which commercial agricultural investments have taken place may be overridden by the governor in order to promote mineral development, and where this happens 'the benefits delivered to generations of communities and families would be displaced by mineral development that hardly

39 Cap L5 LFN 2010.

40 *Ibid.*, section 1. This is, however, subject to the provisions of the Act regarding federal government land and land in the Federal Capital Territory Abuja of which radical title is vested in the federal government. See section 47 of the Act.

41 Foreigners are not entitled to a right of occupancy. See *Ogunola* v. *Eiyekole* [1990] 4 NWLR (Pt 146) 632.

42 See sections 5, 6, 34 and 36 of the Act.

43 Right of occupancy may be statutory or customary, and may be by way of actual or deemed grant by the governor or local government. See, *supra*, note 42.

44 Sections 21 and 22 of the Act.

45 See section 51 of the Act for the definition of public purpose.

46 See section 315(5)(d), Constitution of the Federal Republic of Nigeria 1999 as amended.

47 For the provision of the Constitution on amendment, see section 9(2) of the Constitution as amended.

48 The provision of section 1 of the Act restricts grantees of a right of occupancy to Nigerians. See *Ogunola* v. *Eiyekole*, *supra*, note 41.

delivers any benefits to the communities and families.'[49] This calls for a policy change that gives better recognition to customary land rights.

Section 6(2) of the Act, which provides that 'no single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor', shows a lack of concern for equity. In terms of the limited land resources for both agriculture and animal husbandry, allowing individuals to acquire 500 or 5,000 hectares of land could mean denial of the right of occupation to many farmers with negative consequences for improved production and sustainable agriculture.

Land titling is a mirage under the extant land tenure regime. The certificate of occupancy does not guarantee title[50] and traditional titles are unreliable and subject to proof through non-documentary evidence which may result in endless litigation. Many farmers are faced with uncertainties in the enjoyment of possessory rights to their land notwithstanding the seeming recognition or protection by certain provisions of the Act. Section 36(2) of the Act provides as follows with regard to agricultural land in non-urban areas:

> Any occupier or holder of such land, whether under customary right or otherwise howsoever shall if the land was on the commencement of this Act being used for agricultural purposes continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this section to land being used for agricultural purposes includes land which is, in accordance with the custom of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

It has been observed,[51] and rightly too, that the provision leaves owners and occupiers of land everywhere in the country vulnerable to the claims of the intruder who may succeed in getting registered as a holder of a customary right of occupancy under section 36(3)[52] of the Act. Many farmers in the non-urban areas are not able to avail themselves of the opportunity offered by the provision of section 36(3) for lack of information and the cost or fear of bureaucratic hassles likely to be involved.[53]

49 C. Nwapi, 'Land Ownership, Mineral Development and Agriculture in Nigeria', in Ako and Olawuyi (eds), *supra*, note 9, at 40.

50 See *Ogunleye* v. *Oni* [1990] 2 NWLR (Pt 135) 745.

51 Mabogunje, *supra*, note 19, at 10.

52 This provision entitles the deemed grantee of a customary right of occupancy using the land for agricultural purposes at the commencement of the Act, upon proof of the description of the land and possession of the said land, to be registered as the person to whom a customary right of occupancy has been issued.

53 Mabogunje, *supra*, note 19.

The Act does not recognise the peculiarities of the socio-economic structure of landholding in some parts of the country. It is reported[54] that although the Act recognises the grant of a customary right of occupancy for grazing land,[55] it does not recognise the right of farmers to graze their animals in land owned by others, even when not in use. It does not recognise grazing rights while a concurrent right to occupancy still exists on behalf of other persons for other purposes, i.e. according rights for crop farming purposes to one person, and rights for animal grazing at different times of the year to another.[56] These concurrent rights in land are prominent in the Northern part of the country between the Fulani herdsmen and the Hausa farmers and have been a significant cause of land dispute in that part of the country leading to loss of lives and property, especially agricultural properties like crops and livestock.[57]

The provision of section 5(2) of the Act, which allows an actual statutory grant made by the governor to extinguish 'all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy', is inimical to the security of landholding by the farmer under customary law, notwithstanding the Supreme Court decisions in *Dantsoho* v. *Mohammed*[58] and *Ibrahim and Mohammed*.[59] Several land rights exist at customary law which may confer on the farmer mere possessory or usufructuary interest (as opposed to proprietary interest) which a grant of statutory right of occupancy may extinguish automatically without recourse to the provisions on revocation[60] under the Land Use Act.

The power of revocation vested in the governor may pose a threat to security of tenure over agricultural land. In the past, agricultural lands subject to acquisition had been granted to wealthy individuals, politicians, corporate organisations and public cooperatives for their personal use thereby defeating the purpose of the law.[61] The possibility of dispossessing farmers of their land for public purposes may result in a lack of enthusiasm to invest in long-term improvements on their farms.

Certain provisions of the Act have diminished the status of land as security for loans to farmers. The requirement of consent for alienation of a right of occupancy[62] constitutes a clog on access to credit facility since the process for

54 Ihugba, *supra*, note 9, at 52.
55 See section 6(2) of the Act.
56 Ihugba, *supra*, note 9, at 52.
57 *Ibid.*
58 [2003] 6 NWLR (Pt 817) 457.
59 [1983] 6 NWLR (Pt 817) 615.
60 Provisions for revocation are contained in section 28 of the Act.
61 While it is hoped that judicial authorities such as *Ereku* v. *Military Governor of Mid Western State* [1974] 10 SC 59 may curb the excesses of our land administrators in this regard, lack of awareness of the position of the law and failure to follow up on the execution of the public purpose for which revocation was meant, especially after the receipt of compensation by the holder of the revoked right of occupancy, give way to the proliferation of executive lawlessness in this regard.
62 See sections 21 and 22 of the Land Use Act.

obtaining consent is slow, expensive and generally fraught with corruption.[63] Also, since the bulk of agricultural land is situated in non-urban areas, the provision of section 36(5) of the Act which prohibits alienation of any sort of such land, makes access to credit facilities illusory. Banks are reluctant to grant credit to farmers who do not have documentary proof of assured access to agricultural land.

D. Inefficient Registration Laws

Aside from the pitfalls associated with the provisions and implementation of the Land Use Act, there are other lapses noticeable in our land use regulation and administration. It has been argued,[64] for example, that lack of registration of many rural and peri-urban land, despite the various government attempts to promote land registration, demonstrates failure of Nigeria's land use regime. Some of our customary possessory interests or usufructuary rights are non-registrable under the extant land registration laws and there are no incentives to motivate the farmers to formalise their land titles.

IV. AGRICULTURAL CREDIT AND GOVERNMENT SUPPORT

Before the advent of the Land Use Act, land in rural areas which constitutes the bulk of agricultural land was generally not considered good security, and various reasons were responsible for this.[65] First, land was mostly owned by the individual, the communities or families with the individual having mere user rights which were not viable as security.[66] Secondly, although the use of writing was not unknown to customary law, such land was seldom covered by documents of title which formed the basis of bank security. Thirdly, the method of conveying such land remained cumbersome and unrealistic, for in most cases, the root of title was enmeshed in historical complications which would not make for a good security. Lastly, there was no way of ensuring that farmers used the loan for the purpose for which it was meant.

Over the years, such rural areas have witnessed the development of rural banking and the whole country has seen the introduction of the Agricultural Credit Guarantee Scheme Fund (ACGSF) by the federal government through the Central Bank of Nigeria. There has been a rapid commercialisation of rural agriculture because the ACGSF guarantees agricultural loans by a bank on the security, *inter alia*, of 'a charge on land in which the borrower holds a legal interest or a right to

63 N. El-Rufai, Why Nigeria Must Revisit Land Reform', *Premium Times*, 21 December 2012, available at http://www.premiumtimesng.com/opinion/112128-why-nigeria-must-revisit-land-reforms-by-nasir-ahmad-el-rufai.html (accessed 12 March 2015).

64 B. Aluko and A. Amidu, *Urban Low Income Settlements, Land Regulation and Sustainable Development in Nigeria*. Paper presented at the 5th FIG Regional Conference, Accra, 8–11 March 2006.

65 See, generally, I. O. Smith, 'The Efficacy of Agricultural Charge as a Form of Security in Nigeria', 2 (10) *Gravitas Journal of Business and Property Law* (1989): 69–73.

66 See *Jacobs* v. *Oladunni Bros.* [1935] 12 NLR 1.

farm or a charge on crops on such land.'[67] It also ensures, *inter alia*, that such loan is not dissipated in any unauthorised activity except for agricultural purposes.

However, while the 'agricultural charge' has certain advantages within the context of the provisions of the Land Use Act,[68] it is susceptible to a number of failures as security. In the first place, in the event of revocation of the right of occupancy over the charged land, compensation is payable only for the unexhausted improvements on the land[69] as opposed to the land itself. Thus where there is the creation of an agricultural charge on land in which the farmer holds 'a legal interest or a right to farm' but without un-exhausted improvements thereon, compensation is not payable in the event of revocation of the chargor's right of occupancy. Also, the definitions of 'holder'[70] and 'occupier'[71]under the Act do not include a chargee, i.e. the lender, so that in the event of such revocation, the chargor-farmer receives the compensation free from any obligation in law to apply the same towards liquidating the debt owed.

Enforcement of the agricultural charge is problematic. Contemplation of judicial sale by the ACGSF Act[72] is ineffectual. While it is axiomatic that a total bar on alienation by section 36(5) of the Land Use Act is no barrier in creating an agricultural charge, it constitutes a permanent barrier in enforcing the charge against defaulters. A sale, whether statutory or judicial, essentially involves a transfer of an interest in land, which transfer is strictly prohibited under the Land Use Act with regard to agricultural land in non urban area.[73] It is most unfortunate that while the federal government is making land available for agricultural holdings, it is making the whole idea of an agricultural charge unattractive by frustrating the enforcement of security, the problem being further compounded by the inability of the bank to foreclose.[74] Although the problem of enforcement must have been appreciated early in the planning of the scheme,[75] this

67 See section 10, Agricultural Credit Guarantee Scheme Fund Act, Cap A11 LFN 2010.

68 The chargee, unlike the mortgagee, has no inherent right to enter into possession of the land and cannot therefore overstretch the powers accruing to him in law as a creditor, the primary entitlement being to the principal sum and interest. Where the charge is registered, it vests in the chargee the rights, powers and remedies conferred by the charge and the right to recover and receive the money secured thereby free from all estates whatever including those of the state. Also, a charge transfers neither proprietary nor possessory interest in land, and its valid creation does not require the governor's consent. See Smith, *supra*, note 65, at 69.

69 See section 29(1), Land Use Act, Cap L5 LFN 2010.

70 A 'holder' in relation to a right of occupancy means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without valid assignment, nor a mortgagee, sub-lessee or sub-under-lessee. See section 51 of the Land Use Act, Cap L5 LFN 2010.

71 An 'occupier' means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-under-lessee of a holder. See section 51 of the Land Use Act, Cap L5 LFN 2010.

72 See section 17(a), ACGS Fund Act, Cap A11 LFN 2010.

73 See section 36(5).

74 In enforcing his security, a chargee can go by the way of a judicial sale or appointment of a receiver, but cannot foreclose, as there is no title vested in him to enlarge by way of foreclosure.

75 For example, the guidelines to the principal legislation assure the bank of 75 per cent of the debt which percentage of loan shall be made available by the Central Bank of Nigeria in the event

has in no way offered an effective instrument of enforcement against the unwilling debtor.[76]

V. EXPORT TRADE IN AGRICULTURAL COMMODITIES

Realising the great relevance of export trade to commercial agriculture, it is necessary to examine the efficiency of the constitutional framework and indeed the international trade regime in boosting commercial agriculture in Nigeria.

The position under the 1999 Constitution is that international trade and commerce are within the exclusive jurisdiction of the federal government.[77] In the case of agriculture, both the National Assembly and the States Houses of Assembly may make laws with regard to agricultural development, among others.[78] The implication is that both the federal government and the states may make laws on agriculture. However, states do not enjoy the same level of participation and priority which they had under the 1963 Republican Constitution (1963 Constitution) in the context of competence to determine trade policy directions in agricultural commodities.[79]

Under the 1963 Republican Constitution, the regions were responsible for the implementation of legislation on standards and quality of commodities passed by Parliament, the regulation of prices through their purchasing authorities and the carrying out of processes related to international trade and commerce before final port inspection and the actual export.[80] However, the position changed from 1966 onwards as a result of the incessant intervention of the military in governance and the introduction of the unitary system of government in Nigeria.[81]

The new model of shared competence under the 1999 Constitution is the removal of complementary provisions under the 1963 Constitution which gave the then regions powers of co-determination in establishing purchasing authorities, regulating the prices to be paid by purchasing authorities for commodities from producers at source and in implementing the legislation on standards and quality passed by Parliament.[82] This obviously truncates the ability of the states to develop their export capacity in agricultural commodities and consequently leads to deficiency in the standards and quality of the country's exports. Whereas under the 1963 Constitution standards pertaining to agricultural commodities were a joint effort between the federal government and the regions, under the 1999 Constitution, states have been stripped of the relevant powers and standards are now determined by the Standards Organisation of Nigeria (SON).

of farmer's inability to pay back the loan. See Guidelines on ACGS Fund issued by the Central Bank Gazette, February 1976.

76 Smith, *supra*, note 65, at 72.

77 See the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended, item 62 on the Exclusive Legislative list.

78 *Ibid.*, Items 18 and 30 on the Concurrent Legislative list.

79 O. Omiunu, 'Trade and Agriculture in Nigeria', in Ako and Olawuyi, *supra*, note 9, at 148.

80 *Ibid.*, at 146.

81 *Ibid.*, at 147.

82 *Ibid.*, at 148.

The exclusion of the states as part of the standardisation process under the 1999 Constitution is a contributory factor to the low quality of agricultural products/food exports from Nigeria and the mandatory standard system has proved to be an inefficient system for the country.[83] The absence of institutions that perform the quality functions of the defunct commodity boards is one of the main reasons for deterioration in the quality of cocoa and cotton products.[84] Whereas the commodity boards in the regions had the opportunity to ascertain grades of agricultural products before sale to merchants for onward exportation, with the abolition of the process, merchants now buy directly from farmers.[85] The position of the 1999 Constitution on matters of international trade in agricultural commodities is inimical to the maximisation of Nigeria's potential in the agricultural sector.

VI. AGRICULTURE AND REVENUE ALLOCATION

As it is today, agricultural reforms remain heavily dependent on revenue allocation from the federal government with the result that the majority of the targets envisaged will not be achieved. Dependence on the federal government by the states for sustainability truncates their capacity to maximise their potential in areas of comparative advantage. Also, Nigeria's budget on agriculture falls far short of the 10 per cent objective set in the Maputo commitments signed in 2003.[86] Consequently, the huge investment required to make the agricultural sector vibrant is lost. With the desired agricultural reform heavily dependent on revenue allocation from the federal government, the majority of the targets envisaged will not be achieved as key stakeholders including the states, the regulators closest to the farmers at the grassroots, are not factored into the process which makes them unwilling to pursue their potential.[87]

VII. TOWARDS A NEW LEGAL AND INSTITUTIONAL REGIME

The eclipse of Nigeria's dominance in commercial agriculture by China, the Unites States of America, Argentina, Indonesia, Malaysia, Côte d'Ivoire, Ghana, Mali and Burkina Faso[88] has been as a result of Nigeria's inefficient legal and

83 A. Adegboye and A. S. Bankole, 'Standards, Technical Regulation and Product Quality', in J. Wilson and V. Abiola (eds), *Standards and Global Trade: A Voice for Africa* (World Bank Publication, 2003): 212.

84 *Ibid.*

85 Although SON does a centralised sampling process to ascertain quality at the ports, SON's agents at the ports find it difficult to do a thorough job due to the vast quantity that they have to go through.

86 See *Public Agriculture Financing in Nigeria: Key Figures*, Special Report (July–September 2010), 51 *Grain de sel* 18, online at http://www.inter-reseaux.org/IMG/pdf/16-18 (accessed 21 May 2016).

87 A. Adesopo, 'Re-examining the Failing Inter-Governmental Fiscal Relations and Sustenance of Nigerian Federation: An Empirical Study', 7 *Asian Social Science* (2011): 10, at 111.

88 Chikaire et al., *supra*, note 1, at 115.

institutional regimes as discussed earlier. Consequently, reforms are imminent to exploit the huge potentials in the area of the country's agricultural productivity for exports.

A. Harmonisation of Existing Agricultural Laws and Policies

While sectoral legislation in the agricultural sector may not be a disadvantage, there is the urgent need to harmonise these laws to avoid conflicts and duplication of responsibility between different agencies for the efficient and effective implementation of their provisions.[89] The provisions of these laws must reflect government economic policies in the areas of trade liberalisation and private sector participation in agricultural production. Penal provisions in these laws need to be reviewed and implementation strictly monitored for effectiveness of these laws.

The process of policy formulation and enactment of appropriate laws must integrate the farmers who are the targets of these laws and policies, and this can be done through the strengthening of farmer's unions and cooperatives that will duly represent these farmers and advocate on their behalf.[90]

B. Land Tenure Reforms

Agrarian reforms in many parts of the developing world owe significant tenacity to land tenure reforms.[91] As an agricultural resource, land tenure reform is a *sine qua non*. Secure access to land and resource tenure is an essential catalytic force for poverty reduction, economic growth and sustainable development.[92] Apart from the importance of secure access to land as a recurring theme in a number of donor policies,[93] it encourages investment with potential for higher productivity and efficiency. It is said that insecurity of tenure leading to loss of access can imply destitution and discourage farmers from making investments to increase productivity or for the reorientation of farm production for the market or for reducing vulnerability and adapting to climate change.[94]

Reform of our land tenure must address the inadequacies and pitfalls in the Land Use Act which is the principal legislation on land use and administration in Nigeria. The provision that radical title is vested in the governor who holds the land in trust for the benefit of the people and the thinking that undeveloped land has no value constitute a great obstacle to the development of a dynamic land market economy and the need for a review of the current initiative of unlocking the commercial potential of land in Nigeria to be realised. There is the need for

89 Ajala, *supra*, note 9, at 25.
90 *Ibid.*, at 27.
91 For example, African countries such as South Africa, Rwanda, Namibia, Tanzania, Ethiopia and Ghana are currently undertaking land reforms as part of their agrarian reforms.
92 Chikaire et al., *supra*, note 1, at 118.
93 *Ibid.*
94 DFID, *Land: Better Access and Security Right for People* (DFID, 2007).

a better strategy that will make land administration work while providing benefits to all citizens of Nigeria. Reduction of rights in land to rights of occupancy is not in the interest of sustainable agricultural productivity since engaging in long-term agricultural investments requires more than a period of years. The provision of section 8 of the Act which streamlines tenure subject of an actual grant and reduces it to a term of years needs a review to give freehold interests to farmers, after all deemed grants are in substance freehold estates, the equalisation of actual and deemed grants by judicial authorities[95] notwithstanding.

The provision of section 6(2) of the Land Use Act is against equitable land distribution and should be removed. There is the need to restrict the size of individual landholdings for agricultural and grazing purposes, while a minimum limit could be fixed and farmers encouraged and assisted to cultivate enough land to meet the high level of productivity for our agro-allied industries and exports.[96] In this regard, the need to undertake a cadastral survey and to explore the possibilities of acquiring unused arable land for the benefit of needy farmers cannot be overemphasised.

It is necessary that the Act de-emphasises a rigid approach to formal tenure recognition and takes on a flexible approach to identifying and recognising informal and lesser rights which section 5(2) of the Act appears to ignore. This will allow for security of tenure and ensure predictable access to land which are central to agriculture.

A systematic but compulsory land titling will boost the status of customary land titles and other informal land rights and enhance effective collateralisation of marketable land for loans. Land titling under sections 34(3) and 36(3) of the Act should no longer be optional but should be a state-assisted project meant to put titles (formal and informal) on record evidenced by documentary proofs. It is said[97] that a tenure reform programme needs to close the gap between the *de facto* realities and *de jure* status, as this creates greater certainty for rights holders and third parties who enter into economic transactions with them, and facilitates sharecropping and the leasing of land which is not productively used at present.[98]

The consent provisions of the Act are known to be a serious impediment to dealings affecting land title and ought to be done away with or at least restricted to outright assignment of rights as opposed to qualified alienation.[99] This would enable holders of agricultural land rights without investment finance to either use such land as collateral to obtain credit, or sublease such lands to those who have the capacity to invest.[100]

95 See, for example, the Supreme Court decision in *Savannah Bank (Nig) Ltd* v. *Ajilo* [1989] 1 NWLR (Pt 97) 305.

96 Chikaire et al., *supra*, note 1, at 120.

97 *Ibid.*, at 121.

98 *Ibid.*

99 That was one of the recommendations of the Presidential Technical Committee on land reform in Nigeria.

100 C. Nwapi, 'Land Ownership, Mineral Development and Agriculture in Nigeria', in Ako and Olawuyi, *supra*, note 9, at 42.

To effectuate these land reforms among others, the popular view is the excision of the Land Use Act from the Constitution to enable amendments to be carried out through the ordinary legislative process.[101] The recommendation has also been made that it may be necessary to decentralise land use policy and regulation to grant states the power to enact their own laws to regulate land within their territory instead of having one central law regulating all lands in the country and to which any other law is subject.[102] This, it is said, 'will encourage states to formulate land use policies that are in tune with local realities and aspirations.'[103] This recommendation is in line with the position of the 1999 Constitution under which land is a residual matter[104] and, therefore, within the legislative competence of the states to legislate on.[105] Also, the view that rights are best vested in those land users who have a clear interest in utilising resources for their own benefit rather than in civic or tribal authorities[106] may be considered to prevent illegitimate acquisition of land by elites for personal gain.

Since repeal of the Land Use Act is not contemplated by the federal government but an amendment to it, and since an amendment of the Act is a rigorous process which may not be easily accomplished,[107] several other options may be adopted at the state level and the Federal Capital Territory, aimed at enhancing land titling processes and better land administration. The following options may be considered.

1. *Putting in place an efficient land registration regime*. This could be achieved through a land registration law comprehensively dealing with the registration of *formal and informal titles* and general dealings in land after verification of claims; the encouragement of the registration of cautions and restrictions; the registration of court judgments; and the registration of titles acquired by prescription, adverse possession or long period of use *nec vi*, *nec clam, nec precario* [i.e. *without force, secrecy or permission*]. It is important that the process of registration be preceded by cadastral surveys and identification of parcels of land in the urban and rural areas, while decentralisation of land registries within the state to capture land rights in the rural areas is necessary.

101 As it is, the Land Use Act which is the principal legislation on land use in Nigeria cannot be altered or repealed except in accordance with the rigorous provision of section 9(2) of the Nigerian Constitution, 1999 as amended.

102 Nwapi, *supra*, note 100, at 42.

103 *Ibid.*

104 Parts I and II, Second Schedule to the said Constitution do not contain land as an item on these lists. In the case of the Federal Capital Territory, such residual power is expected to be exercised by the National Assembly.

105 Land is not an item on either the Exclusive or Concurrent Legislative lists in the Nigerian Constitution 1999 as amended.

106 Chikaire et al., *supra*, note 1, at 121.

107 The amendment follows the rigorous provision of section 9(2) of the Nigerian Constitution 1999 as amended.

2. *Formulation of policies and guidelines at the federal and state levels streamlining the allocation of land to the various sectors of the economy and, in particular, giving the agricultural sector priority in land allocation*. These would compliment the implementation of the National Land Development Authority Act.[108]
3. *Addressing the problem of implementation of the Land Use Act*. One of the major problems confronting the Land Use Act, as it were, is implementation. Actualisation of the main objectives of the Act[109] becomes increasingly difficult due to greed, corruption, and undue reliance on illegitimate fees and levies for administrative purposes, as well as abuse of power generally by the governor. A change in the positive direction would facilitate effective implementation of the Act and make its objectives realisable.
4. *Overhauling the Environmental Impact Assessment and other protective measures aimed at reducing or ameliorating the environmental impacts of oil pollution on agricultural land in the Niger Delta region, to prevent further impoverishment of the soil and destruction of agriculture produce.*
5. *Enactment of agricultural law by the states articulating state policies on different facets of agriculture including access to land, soil protection, assistance to farmers, etc. should be a priority in line with the Nigeria Agricultural Transformation Agenda.*[110] Not only would this go a long way in reducing conflicts noticeable in sectoral legislation but should provide the much desired guidelines for agricultural development.

VIII. NEED FOR A NEW STATE POLICY ON AGRICULTURAL CREDIT

A. Overhauling Agricultural Credit Scheme

The current trend towards building an agriculturally oriented economy calls for urgent overhauling of the agricultural credit scheme. There is the need to harmonise the various laws on the agricultural sector with a view to making security more attractive.

It is suggested that the right to transfer agricultural holdings in non-urban areas which has been crippled under the Land Use Act be restored. This will remove

108 Cap N4 LFN 2010.

109 The main objectives of the Act as contained in the Preamble thereto are 'to assert and preserve the rights of all Nigerians to the use and enjoyment of the land of Nigeria; to assure protect and preserve the rights of all Nigerians to the use and enjoyment of the land and the natural fruits thereof in sufficient quantity; and to enable them provide for the sustenance of themselves and their families.'

110 The Agricultural Transformation Agenda (ATA), an aspect of President Goodluck Jonathan's Transformation Agenda, is geared towards revamping the agricultural sector, ensuring food security, diversifying the economy and enhancing foreign exchange earnings. It is under the supervision of the Federal Ministry of Agriculture and Rural Development (FMARD).

doubts as to the possibility of a valid creation of agricultural charge as well as making enforcement of such by the chargee easier and meaningful.

Since no security can be viable unless the *res* is preserved, efforts should be geared towards ensuring that the chargor-farmer may not only spend the loan for agricultural purposes as the law now ensures but, more importantly, ensuring that the proceeds of the sale of such farm produce is not dissipated elsewhere as opposed to liquidating the agricultural loan.

In all cases where compensation is payable, it should be possible for all creditors of such holders or occupiers to submit claims in relation thereto. In order to make agricultural charges more viable, there should be a way of ensuring that there is no other competitor for such compensation apart from the creditor bank. Legislation on agricultural charges, for example, should seal off any other encumbrances on the land or improvements thereon while, at the time of creation, such land and/or improvements thereon should be free from encumbrances.

Where judicial sale is effected in the event of default to repay the loan, it should be possible for such property to vest automatically in the Agricultural Loans Board which will serve as a transfer to the creditor bank. Such transfer should be removed from the ambit of any exercise of the governor's consent.

B. Increasing Budgetary Allocation to the Agricultural Sector of the Economy

It is a paradox that while the federal government is putting in place policies aimed at improving the agricultural sector and increasing productivity to eradicate poverty and boost revenue through exports, the budgetary allocation of 1.2 per cent to the sector in the 2016 budget falls far short of expectation, violates the Maputo/Malabo Declaration[111] and exhibits the government's lack of political will to boost agriculture. Juxtaposing our estimated population of 178.52 million with the low budgetary allocation to the agriculture sector, it is reported[112] that the per capita investment in agriculture is less than N = 500.

There is the need to raise the budgetary allocation in the agricultural sector to at least 10 per cent of the budget to meet with international commitments, to ensure urgent diversification of the economy and to save it from total collapse as a result of the downturn in the crude oil sector.

111 These are declarations of the African Union. The latest, which is the Malabo Declaration on Accelerated Agricultural growth transformation for shared prosperity and improved livelihoods 2014, reaffirms the earlier Maputo Declaration of 2003. The Maputo Declaration pegs budgetary allocation to agriculture at 10 per cent.

112 See K. Ukaoha in the *Daily Trust* of 23 February 2016, reported online in http://www.dailytrust.com.ng/news/business/2016-budget-forum-wanting-review-of-agricultural-allocations/134961.hmtl.

C. Developing a Regulatory Framework for the Development of Commercial Aquaculture[113]

The global decline in the fish population has brought about responses in many parts of the world through a reliance on aquaculture to boost supply.[114] As Nigeria is one of the major contributors to the fastest growth of aquaculture in Africa,[115] there is the need to optimise the benefits derivable therefrom. It is said[116] that 'management practice ought to be environmentally acceptable, economic, bio-technically feasible, socio-economically viable and cost effective.' For example, it is imperative that aquaculture be sustainable not only in terms of its returns over the long term, but also in terms of its environmental impact.[117] This requires the development of an effective regulatory framework 'that will protect the industry, the environment and other resource users and consumers'.[118]

However, pending the development of such regulatory framework, it may be necessary to adapt extant regulations and the starting point, it is said,[119] is the amendment of the Environmental Impact Assessment (EIA) law or the regulations made under its provisions 'to mandate aquaculture enterprises to carry out EIAs as the basis for a sound technical approach for the development of sustainable aquaculture management systems in Nigeria'.[120] Such EIAs shall include mitigating measures to prevent or minimise negative environmental impacts.[121]

IX. SUMMARY AND CONCLUSION

Nigeria's agricultural sector has a lot of potential yet to be harnessed. The urgent need to diversify the country's economy, eradicate poverty and boost the nation's revenue through commercial agriculture, requires legal and institutional reforms contextualised within the socio-economic background of the country, to attain optimum agricultural productivity and economic growth.

There is the urgent need to harmonise the various sectoral and allied laws on agriculture for effective implementation and enforcement. States have a major role to play in this regard, and the involvement of the farmers' unions and cooperatives as well as private sector participation need to be factored into the law-making.

113 Commercial aquaculture, according to the Committee for Inland Fisheries of Africa (CIFA) (2000) is 'the rearing of aquatic organisms with the goal of maximising profit. It is done mainly by the private sector and without direct financial assistance from donor or government sources'.

114 B. T. Adesina et al., Commercial Aquaculture in Nigeria: Designing a Legal Framework', in Ako and Olawuyi, *supra*, note 9, at 186.

115 P. A. Ekunwe and C. O. Emokaro, 'Technical Efficiency of Catfish Farmers in Kaduna – Nigeria', 5 *Journal of Applied Sciences Research* (2009): 802–5.

116 Adesina et al., *supra*, note 114.

117 *Ibid.*, at 187.

118 M. New, 'National Aquaculture Policies, with special reference to Namibia', in J. Svennevig et al. (eds), *Legislation for Sustainable Commercial Aquaculture* (Balkema, 1999): 303–18.

119 Adesina et al., *supra*, note 114, at 189.

120 *Ibid*.

121 Adesina et al., *supra*, note 114, at 189, citing Dosdat and Pamela (2000).

Land tenure reform is key to the actualisation of government policies on agriculture and, therefore, deserves the most urgent attention by the law-makers. Amendment of the various provisions of the Land Use Act suggested earlier are desirable, but putting in place regulations at the state level aimed at the effective implementation of these provisions would go a long way in actualising the main objectives of the Act and in assuring the access and security of tenure necessary for sustainable agriculture. Taking bold steps towards land titling as suggested would enhance the status of agricultural land as a viable security for bank lending.

The lending policy of banks in the agricultural sector must change for good. Central bank policies and guidelines should be tailored towards agriculture-friendly credit and guarantee schemes, enabling banks to increase lending to farmers at low interest rates and the central bank to offer and implement efficient credit guarantees in favour of farmers.

Improving the quality of our agricultural produce for export requires participation of the states in the quality assurance processes from the grassroots farmers through the commodities boards to the merchants for onward exportation. The superintending role of the agents of the Standards Organisation of Nigeria (SON) would complement the quality assurance efforts of the states towards meeting international standards and consequently boosting returns on exports.

Putting in place legal and institutional frameworks for sustainability of commercial aquaculture and optimising the benefits accruing from it is long overdue. As the country ranks favourably high in the percentage of productivity in this sector within the African continent, a quick response to international demands will be a great advantage.

Diversification of Nigeria's economy presupposes giving priority to the sectors in which the country has comparative advantage. One of such potent sectors is agriculture, and putting in place efficient legal and institutional frameworks will promote commercial agriculture in Nigeria and boost the country's revenue.