LAND AND RESOURCE RIGHTS: ISSUES OF PUBLIC PARTICIPATION AND ACCESS TO LAND IN NIGERIA*

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Land administration under the uniform system of land tenure, which Nigeria has practised since 1978 is centralized. This has reduced the scope for public participation in decision-making and hampered efforts to promote access to land. This paper examines the key features of land administration in Nigeria. It goes on to discuss recent developments in environmental governance, particularly the introduction of legal instruments, which guarantee procedural rights such as access to information, the right to participate in decision-making and access to justice. It recommends that land administration in Nigeria should similarly comprehend a regime, which guarantees procedural rights.

INTRODUCTION

The promulgation of the Land Use Act (LUA)[1] in Nigeria on March 29th, 1978 brought about a fundamental change in land tenure systems through the abolition of private ownership of land.[2] By virtue of its s. 1, all land comprised in the territory of a State is vested in the State Governor who holds in trust for the use and common benefit of all Nigerians.[3] Under this uniform system of land tenure, the highest interest in land is a right of occupancy. This can either be a statutory right of occupancy, which is granted by the State Governor in respect of land in both urban and non-urban areas or a customary right of occupancy, which is granted by a Local Government in respect of land in a non-urban area.[4] Designation of urban and non-urban areas of a State is the exclusive responsibility of the State Governor.[5]

The LUA originated as a decree of a military government, which advanced as a rationale for its introduction, the "*limiting, inhibiting and divisive nature of land tenure in the country."*[6] By abolishing private ownership of land, proponents of the LUA believed that it would (i) facilitate access to land for public and private use, (ii) promote tenure security and (iii) curb land speculation, which had been driving land values upwards and

out of the reach of most Nigerians. But after 25 years of being in force, these goals are from being achieved. Instead, the LUA has become the focus of widespread criticism. These have culminated in calls for the repeal of the LUA on the grounds that its implementation has been extensively abused because of its unwieldy provisions.

> *" The creation of Trust relationship all over the civilized world is a voluntary act of its creator. It is an office of confidence and strict accountability. A trusteeship is an office of very high fiduciary responsibility, which can never or should never be assumed by force of arms as under the Land Use Decree. This bulldozer of a Decree, enacted without proper consultations, vests ownership and management Rights over other peoples land in a "stranger element" whose only qualification is that of overlord …. Here lies the fallacy of this fake trusteeship created under section 1 of the said Decree. … A forced trust with powers vested on the Trustee to convey trust property to any one he pleases, including himself, without question, must by common sense be bizarre and monstrous indeed. ….. In the circumstance, there is the urgent need for the Constitution Debate Committee to take a very close look at this Decree, as it presently stands. The Decree needs to be either abrogated or moderated."* [7]

Despite its title, the LUA mainly deals with land administration. On land use, it provides that both the State Governor and a Local Government can grant rights of occupancy for any purpose. But the consent of the State Governor is required for any grant of a customary right of occupancy for agricultural purposes if the area of land exceeds 500 hectares or if granted for grazing purposes, the area of land exceeds 5000 hectares.[8]

INSTITUTIONAL FRAMEWORK FOR LAND ADMINSTRATION UNDER THE LUA

Primacy of the State Governor[9]

This is achieved n several key respects. First, the State Governor can exercise the power to grant statutory rights of occupancy in any part of the State, whether urban or not. But a Local Government's power to grant customary rights of occupancy is confined to non-urban areas only. Thus, it is clear that in the event that a State Governor elects not to designate non-urban areas (and there is no mandatory requirement for him to do so under the LUA), Local Governments will effectively have no role to play in land administration in that State. Moreover, upon the express grant of a statutory right of occupancy under

LUA, s. 5, all existing rights to the use and occupation of the land (including under a customary right of occupancy) are extinguished. Secondly, any alienation or transfer of a statutory right of occupancy requires the consent of the State Governor. Although, the alienation or transfer of a customary right of occupancy only requires the consent of the Local Government, if the transaction is a sale or the property is subject to the order of a Court, the State Governor's consent must be obtained. Furthermore, proof of the right of occupancy, which is known as a certificate of occupancy can only be granted by the State Governor. Consequently, any person who holds a customary right of occupancy is still required to apply in the prescribed manner to the State Governor for a certificate of occupancy. Additionally, as already stated, the designation of the urban and non-urban areas of a State is the exclusive prerogative of the State Governor.

Local Governments

There are over 750 elected Local Governments or municipalities created under the 1999 Constitution. Local Governments are recognized as a separate and independent arm of government. Nevertheless, despite being the level of government closest to the people, they are not vested with any title in land. Under the LUA, s. 2(1)(a), Local Governments are only charged with the control and management of land in non-urban areas and are entitled to grant customary rights of occupancy in such areas. However, they are not expressly conferred with the power to issue any proof of the right of occupancy and are in other significant respects subject to the overall control of the State Governors.[10] As a result, the position of Local Governments under the LUA has been described as "*unenviable.*" Suggestions have ranged from the outright removal of Local Governments from the scheme of the Act with traditional chiefs and heads of family taking their place to the expansion of the role of Local Governments through the removal of State Governors from the scheme of the Act.[11]

Federal Government

The Federal Government does not play a role in land administration other than in relation to federal land. This is comprised of land holdings vested in the Federal Government

prior to the commencement of the LUA and which it retains free of the requirements of the LUA.[12]

Land Advisory Bodies

These are the Land Use and Allocation Committee (LUAC) and the Land Allocation Advisory Committee (LAAC).[13] The functions of the LUAC are threefold. These are expressed in the LUA as (i) advising the State Governor on any matter connected with the management of land in an urban area, (ii) advising the State Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest and (iii) determining disputes as to the amount of compensation payable for improvements on land. On the other hand, the functions of the LAAC are not similarly expressed in the LUA. There is just a provision to the effect that the LAAC is charged with advising Local Governments on any matter connected with the management of land in a non-urban area. The paramount position of the State Governors is also evident in the constitution of these two bodies. Appointment to the LUA is the exclusive prerogative of the Governor and the only requirement under LUA, s. 3 is that the membership shall include *"not less than two persons possessing qualifications approved for appointment to the public service as estate surveyors or land officers and who have had such qualification for not less than five years"* and *"a legal practitioner."* There is no such requirement for the LAAC as it is only provided that the Committee *"shall consist of such persons as may be determined by the State Governor acting after consultation with the Local Government."*

RECENT DEVELOPMENTS IN ENVIRONMENTAL GOVERNANCE

Trends in environmental governance, as exemplified in international legal instruments such as Principle 1 of the *Stockholm Declaration on the Human Environment*, Principle 10 of the *Rio Declaration on Environment and Development* and more recently, the ***United Nations Economic Commission for Europe (UN/ECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention")***, emphasize procedural rights such as access to information, public participation in decision-making and access to justice.[14]

Art. 1 of the Aarhus Convention specifically states that *"… each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."*[15] There is as yet no Africa-wide (or a sub-regional) instrument, which similarly defines the nature and components of participatory environmental governance.[16] However, legal instruments such as the Aarhus Convention highlight the extent and means by which guarantees on procedural rights can strengthen and support substantive rights.

CONCLUSION

Land is an environmental resource. It is therefore pertinent to consider how procedural rights can be promoted and enhanced within the overall context of land administration in Nigeria and indeed in other African countries. At issue in Nigeria are the enormous powers concentrated in the respective State Governors or those acting under their delegated powers, for example, State Commissioners for Lands. It is perhaps not realistic to expect in the short or medium term any relinquishment of State ownership of land or even minerals including oil and natural gas.[17] Given this reality, land administration is critical to improving wider public participation and access to land. But as with previous Constitutions, the 1999 Constitution elevates the provisions of the LUA to the status of constitutional provisions thereby making their modification or amendment very difficult. The result has been that since its inception, the LUA has not been amended or modified. There are other constraints to bringing about land reforms in Nigeria. These include the influence of local political and economic elites. This is on account of the fact that the vesting of land in State Governors has created powerful systems of authority and political patronage. Therefore, those with access to the corridors of power are able to easily acquire land sometimes through the dispossession of other poorer groups. It is also noteworthy that the transaction costs for obtaining certificates of occupancy or official consent for the alienation or transfer of rights of occupancy have become important sources of government revenues. Some States such as Lagos charge as much as 10% of the consideration for an alienation or transfer as transaction fees. Clearly, such States are likely not to be supporters of any change to the status quo.

The LUA has facilitated access to land for public use but it has not achieved the same ends as far as land for private use is concerned. Tenure insecurity still persists because the holders of rights of occupancy, especially those with deemed grants have not complied with its provisions, for example, by obtaining certificates of occupancy as proof of such rights and applying for official consent for alienations or transfers. Thus, dealings in land have continued as if the LUA had not been passed. If there are no immediate prospects of private ownership of land being restored, land administration must receive greater attention and procedural rights including access to information and the right of the public to participate in decision-making must be guaranteed. The exact components of these procedural rights especially within the context of land and resource rights will need to be worked out in greater detail. But the first step in achieving this goal must be to mobilize public support for the removal of the LUA from the 1999 Constitution. This should be followed by decentralization of land administration.[18]

NOTES

* A summary of this paper was presented at the First Workshop of the Pan-African Programme on Land and Resource Rights (PAPLRR) held at Cairo, Egypt, March 25-26, 2002.

[1] Cap. 212, Revised Laws of the Federation of Nigeria 1990.

[2] In *Makanjuola v Balogun (1989) 5 S.C. 82,* the Supreme Court held that the effect of the LUA is that the State Governor is vested with absolute ownership of land in each State.

[3] However, LUA, s. 49(1) limits the scope of s. 1 by expressly providing that title to land vested in the Federal Government or any of its agencies at the commencement of the Act shall continue to vest in the Federal Government or agency concerned.

[4] See, LUA, ss. 5 & 6. Where land was vested in any person prior to the commencement of the LUA, that person shall be *deemed* to hold the land under a statutory right of occupancy or a customary right of occupancy, depending on whether the land is located in an urban or non-urban area, see, LUA, ss. 34 & 36. But with deemed grants in respect of undeveloped land in an urban area, the holder is only entitled to a plot or portion of land not exceeding half hectare in area and any excess land is vested in the State Governor, see, LUA, s. 34(5).

[5] LUA, s. 3.

[6] Comments by O. Obasanjo quoted in 0. Adigun, *"Legal Theories of Property – The Land Use Act in Perspective"* in O. Adigun (ed.), *The Land Use Act – Administration and Policy Implication*, (Lagos, 1991) at pg. 14.

[7] Comments by L. Babatunde in *"The Future of the Land Use Decree"* in L. Babatunde, Hints *on Land Documentation and Litigation in Nigeria*, (Lagos, 2002) at pp. 220-226.

[8] LUA, s. 6(2).

[9] Currently, there are 36 States in the Nigerian Federation.

[10] See, J.A. Omotola, *"The Land Use Act and Customary System of Tenure,"* in J.A. Omotola (ed.), *The Land Use Act – Report of a National Workshop,"* (Lagos, 1998), pg. 39 and A.O.O. Ekpu, *"The Role of the Local Government in the Implementation of the Land Use Act: The Bendel State Experience"* in O. Adigun (ed.), *The Land Use Act – Administration and Policy Implication, supra* note 6 at pg. 49.

[11] Ibid.

[12] LUA, s. 49.

[13] LUA, ss. 2, 3 & 4.

[14] See, C. Bruch, *Regional Opportunities for Improving Environmental Governance through Access to Information, Public Participation and Access to Justice*, a paper prepared for the 8th Session of the African Ministerial Conference on Environment (AMCEN), Abuja, April 3-6, 2000.

[15] The Aarhus Convention allows non-member States of the Economic Commission for Europe region to ratify it.

[16] C. Odote & M.O. Makolor, *"African Initiatives for Public Participation in Environmental Governance"* in C. Bruch (ed.), *The New "Public" – The Globalization of Public Participation, (Washington, D.C., 2002),* pg. 122.

[17] Unlike land, ownership of minerals including oil and natural gas is exclusively vested in the Federal Government.

[18] Potential decentralization models are discussed in C. Toulmin, *"Decentralization and Land Tenure"* in C. Toulmin & J. Quan (eds.), *Evolving Land Rights, Policy and Tenure in Africa,* (London, 2000) at pp. 229-245.