

Identifying Appropriate Tools for Land Governance in Nigeria

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Key Words: Tenure, land fragmentation, title, Nigeria

SUMMARY

There is no doubt that land is socially embedded. Most African countries have land systems that have strong socio-cultural affinity. Consequently it remains difficult to sever land administration system in such countries from overbearing political, social, cultural and economic influences. Such systems do not freely support or encourage rapid economic development because they are resistant to transition to open market influences. In an effort to ensure sustainable economic development, most countries have accepted market economy and free enterprise as its economic model. This requires that good land governance is entrenched to encourage socio-economic development. Nigeria is working towards this. Such a system must give good attention to improved methods for transferring rights and interests in land to facilitate commercial activities. The ultimate desire is to reform the land administration system. Part of the agenda of the present Government in Nigeria is to introduce changes in the land titling system to guarantee the security of tenure and certainty of rights in land to citizens and various stakeholders. It is believed that the national goal of attaining sustainable market economy cannot be easily realized without liberalizing land titling process.

Various approaches are being adopted to enhance effective land governance in Nigeria. This paper intends to highlight these approaches and to appraise their impact in the land market.

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1. INTRODUCCION

Land lies at the heart of social, political and economic life of most African countries including Nigeria. Along with other resources, it is a key factor for economic growth and development of Nations. It is the foundation for shelter in the urban areas and the source of livelihood in the rural areas; it is an indisputable source of employment and wealth. It is generally indestructible, inexhaustible yet inelastic. Land in Africa has historical, cultural, social and spiritual significance to the communities and to individual holders. Even the orthodox religions insist that it is anathema to tamper with monuments that mark land boundaries. Land issues are therefore sensitive, demanding careful handling to avoid social and or political conflicts. The present Government in Nigeria has identified the land sector as one of its priority focal areas and is therefore working to implement land reform with the aim of re-appraising the existing management and distribution pattern so as to ensure that rights over any piece of land are identified, demarcated, documented and the rights inherent secured. The subsisting land holding system was created to ease access to land by all in the wake of increasing pressure for economic development. But the realities of the moment have made it necessary to improve the system to be able to cope with the unending competition for use of land, especially in towns and cities and in productive high-value peri-urban areas because of rapid population growth, urbanization and growing market economy. The aim is to change the old ways of doing business and to reposition the country as one of the world's top economy in the nearest future. The existing statute governing land use and administration provides a guide for administering all lands in the country, but it has been difficult to implement the rules uniformly between the urban and rural areas. Land use and administration have not followed a streamlined pattern across the country in spite of the inclusive co-existence of both the customary and statutory land rights within the prevailing Statute on land. Because land in the rural areas is the principal source of livelihood to rural dwellers, poverty alleviation programs need to also provide secure rights to land in both the urban and rural areas, for slum dwellers as well as agricultural communities. As Nigeria works to improve its economy, a sustainable property rights regime is a necessary foundation for the required structural transformation.

2. OVERVIEW OF LAND GOVERNANCE

Land governance is concerned with decisions that are made about access to land and its use, the manner in which the decisions are implemented and the way competing interests are managed. Good governance in land matters is usually of a technical, procedural and political nature (Kironde:2009). This is derived from the priorities a government sets for its economic development. To a great extent this is influenced by the socio-cultural ideologies of the particular nation because rights over land cannot be separated from the operations of civil, political and human rights just as “they are dependent on political, administrative and professional commitment to ensure fair treatment and equal opportunities for all” (Kironde:2009). Every government aims to achieve a set of political objectives that would ensure social stability. Good

land governance is key to social security and national stability. It works with standards and simplified processes. Programs for poverty alleviation, economic empowerment, agricultural development, gender equity and socio-economic development are major factors for national peace and ultimately require the land administration component to be incorporated in a sustainable manner so as to become effective. In every respect land remains an indispensable element in national economic development. It is often the major source of conflict and social strife especially when there are traces of insensitivity in its management. On the other hand it can also encourage social stability if there is equity in its allocation. The role of government therefore is to ensure that land and its use are administered to protect both public and private interests as much as possible. Although there is no blueprint for land administration across the nations but every land administration process aims at providing a reliable basis for “determining, recording and disseminating information about ownership, value and use of land when implementing land management policies” (Dale & McLaughlin:1999). A major indicator of good land governance is the ease of access to the records and transparency of the processes and procedures involved together with the time cost of acquiring the land. These also depend on the guiding rules, processes and organizational system through which the access is delivered.

3. LAND GOVERNANCE IN NIGERIA

3.1 Country Statistics

Nigeria is a Federation of thirty-six (36) States and a Federal Capital Territory, Abuja. It was under Colonial rule until 1960 when it gained independence. It has a land area of approximately 923,768 sq. km, a population of approximately 140 million, by 2006 national census, and more than 250 ethnic groups. It is the most populous country in Africa, accounting for about 47% of West Africa’s population, with a growth rate of 2.4% per annum. Nigeria is a petroleum-based economy, ranking among the topmost oil producing countries of the world. It is ranked the second largest economy in the sub-Saharan Africa but it is still struggling with the problem of infrastructure. Oil provides 20% of the Gross Domestic Product (GDP), 95% of foreign exchange earnings and about 65% of budgetary revenues. (Wikipedia: April 2009). Although it is endowed with enviable land resource, about 70-80% of the land area lie within the rural areas where the major activity is agriculture. With growing urbanization in Nigeria, there is rapid rural-urban migration, weakening rural agricultural workforce. Similarly, the growing shift to market economy and the benefit of information age have created the desire for new social contract between the citizens and the government. There is also growing demand for land and assured rights over the land as a factor for economic empowerment.

3.2 Low Level of Documentation

In spite of urbanization, agriculture and other informal land-based activities remain key to livelihoods, income and employment for most Nigerians. While urban population is growing rapidly the rate of increase of urban infrastructure is not commensurate, including land titling infrastructure. A small proportion of urban dwellers occupy serviced land with registered title. Statistically, about 3% of land in the country is mapped, titled and registered although other informal documentation procedures are adopted for many landed property transactions in both urban and rural areas across the country. Basic infrastructure are almost inexistent in the greater part of the rural areas. While the poor documentation does not diminish the validity of many land

transactions, especially in rural areas, it does not however confer registerable title or full economic benefits to the holder. The implication is that a large proportion of the population are yet to secure marketable title to the land they occupy in both urban and rural areas. That is to say that a much larger part of the land asset in Nigeria still lie unregistered. Meanwhile increasing commercial activities are bringing the issue of title to land under heavy pressure when financial support is sought is sought from institutions, especially within the urban and peri-urban areas and in fringes with high-value farming prospects. Apart from the problem of using the land as collateral, low level of infrastructure also encourages unplanned settlements and isolated land developments because the demand for land by citizens must be met somehow. Unfortunately the inventory of developments in these unplanned settlements is scarcely available. Consequently, because of the poor documentation of the developments, the full economic potentials of such “occupied” land as a veritable source of statutory revenue to the allocating authorities and as a means of economic empowerment of the holders have often been lost. Even where documentation exists, the records are still substantially held in analogue format.

3.3 The Basis for Land Reform

Right to land has become an obvious factor for sustainable livelihood in many nations. Similarly assured property right is a fundamental cornerstone for achieving national, social and economic stability. Economists maintain that without strong property institutions many countries may not achieve economic success (Riddell:2000). This demands the development of appropriate land rights infrastructure including cadastre, land registry and human resources.

This demand fired the commitment of the Federal Government of Nigeria to introduce land reform aimed at amending the laws and specifically “changing the structure of land ownership in Nigeria so that people in both rural and urban areas can bring their land as an asset to play a part in the market” (Ukaejiofo:2009). Land reform is a response to the needs of people living in poverty in the midst of plenty. “Citizenship” today includes the right to have access to land and to other resources, to information and to sustainable environment. (Riddall:2000). It is a confirmation of the rights of citizens and social justice. A substantial part of the land under use in Nigeria is yet to come under the purview of government system even though the government, under the subsisting Land Use Act, L.5, 2004 is the Trustee, the investor and the governor. Arguably less than 50% (of the small proportion) of lands duly documented and registered in the different State Ministries of Lands are followed up to ensure that the title holders fulfill their annual financial obligations to government.

With its large expanse of land, Nigeria has the potential to build a prosperous economy, reduce poverty significantly and provide basic infrastructural services to meet the needs of its populace if investment in developing the land administration infrastructure is given prominence. Land reform is thus expected to improve the system of land administration and provide the needed management infrastructure.

4. LAND ADMINISTRATION BEFORE AND DURING THE COLONIAL ERA

4.1 Traditional Land Administration System

Under the traditional land law, before the advent of Colonial system, land was either owned by individuals or by the family or the community. The right to inherit land was the major form of social security. It was vested in chiefs, emirs and family heads who held the land in trust for members of the community or family until the Treaty of Cession of Lagos to Queen Victoria in 1861.

In the Northern part of Nigeria, land under customary law was an inalienable property belonging to the whole community and administered by the Emir. Under Islamic Law, which also operated in the Northern Protectorate, land was administered under three categories: occupied land, unoccupied land and common land (acquired through warfare, cession or treaty and were used for grazing, markets or as praying grounds). Islamic law allowed women to inherit land which was different from what obtained in the southern part of the country. Land inheritance in the South (including the now South-East, South-West and South-South Zones) was through patrilineage. Women were not allowed to inherit land except through their sons. There were no formal documentary records of titles to land. At best traditional monuments and other prominent natural land marks set the boundaries. Consequently with the intervention of the Colonial Government, land fragmentation and individualisations started. Legal documentation became imperative.

4.2 Land administration Under the Colonial Government

Land registration was introduced in Nigeria in 1863 to provide a register for basic documentation of rights in land. That law underwent series of amendments to produce the Title Registration Act of 1935. Until 1935, Land tenure was governed by the “Land and Native Rights Proclamation” law introduced in the Colony of Lagos and the Southern Protectorate in 1900 and in the Northern Protectorate in 1901. The two laws were however not exactly similar in content because of political exigencies. The English Land Tenure System was gradually introduced into the Nigerian legal system under the English Common Law, and the Crown Lands Act (which was later re-named the State Lands Act) eventually formalized the processes of land administration in Nigeria, particularly for lands in the Federal Territory and Lagos Colony. The law was adopted as the Crown Lands Law of Western Nigeria (when the country had Regional Governments) for the administration of lands within the then Western and Mid-Western Regions, while the State Lands Law of Eastern Nigeria, also adapted from the Crown Lands Act, governed the administration of State lands comprised in the then Eastern Region. The provisions of the various laws (for the Western and Eastern Regions) were substantially similar though it did not cover the administration of freehold lands in those regions. They however differed significantly with the law governing the management of land comprised in the Northern Region where the Colonial Administration nationalized land because land comprised in that region had continued to be held by the Emirs, in trust for the citizens, since the time of the Fulani conquest (Jihad). The Land and Native Rights Proclamation law that was introduced in 1910 declared all native lands and all rights in land in the Northern Region to be under the control of the government. The nationalization was consolidated by the Land and Native Rights Proclamation of 1914. That law was later repealed and re-enacted as the Land and Native Rights Ordinance of 1961 which was later replaced by Land Tenure Law, 1962. The law still reaffirmed the provisions of the Native Rights Proclamation Law of 1910. Thus, while the State Land Law of the Southern Regions

applied only to State lands, the Land Tenure Law of 1962 applied to all lands in the Northern Region which was referred to as "native land". The major difference between the laws in the South and North was the fact that freehold was possible in the South while only leasehold applied in the North. The unfortunate implication of the situation was that three different laws governed land administration in Nigeria while a single law (Title Registration Act of 1935) governed land registration. Furthermore, the laws, especially with regards to the North, extinguished the existing traditional land right system without taking into account the culture and tradition of the people.

5. THE LAND REFORM PROJECT

5.1 The Land Use Act CAP L.5, 2004 (Originally Decree No. 6 of 1978)

Land reforms have always happened in Nigeria. Ironically, however, it has generally been limited to the review of existing laws on land, especially as it concerns land acquisition and rates for compensation. They scarcely addressed the processes of land administration in a comprehensive manner. The most revolutionary land reform came in the Land Use Act Cap L.5 of 2004, originally promulgated in 1978. It changed the land tenure system by unifying the various land laws in force in different parts of the country. Essentially the following factors motivated government to promulgating the Land Use Act. They include:

- The desire to introduce a uniform land tenure system in the country. The Act sought to unify and harmonize the land tenure system for the entire country;
- The desire to improve access to land for all Nigerians in any part of the country;
- The rising demand for land by the Federal and State Governments for public purposes (large-scale housing projects, irrigation schemes, industrial projects, etc), and
- The increasing cost of compensation for land acquisition by government.

(Agriculture:2009). In addition to these objectives it aimed at eliminating gender inequity by making land available to **all Nigerians** – male and female, but its implementation does not seem to have been effective because the provisions have not been well understood by the implementing agencies.

5.2 The Search for a Sustainable Land Governance Tools

The present Federal Government in Nigeria listed land reform as one of its seven cardinal programs. This is another effort to give strong prominence to land governance issues. The reform seeks to strengthen the economic and productive potential of land by restructuring the existing land law and the institutional system for its administration. It also seeks to apply other improvements necessary to ensure effective, secure and uniform land titling procedures nationwide. It desires to take advantage of the well known fact that land reform is a major component in achieving sustainable economic development to place Nigeria among the top twenty world economies by 2020. Before now the various Governments (Federal and State) had initiated a number of programs through the various Ministries to address aspects of land governance. Some of the initiatives at the Federal level include:

5.2.1 The Establishment of the National Technical Development Forum on Land Administration (NTDF)

The National Technical Development Forum on Land Administration (NTDF) came as an effort by the Federal Government, through the Ministry responsible for land administration, to ensure a mutual exchange of ideas among the two levels of government – Federal and State so as to fully understand and interpret the land laws better and therefore improve land administration processes and procedures countrywide. The Forum which serves as a peer review and influence programme for advocacy and sensitization on applicable best practices nationwide was inaugurated in April 2006 as a follow-up to the earlier resolution of the National Council on Housing and Urban Development in November 2005. The membership consists of Land Officers (Estate Surveyors and Valuers), Cadastral Surveyors and Registrars of Deed. Generally, the heads of Lands Department, Surveyors-General and Chief Registrars of Deed in the States are actively involved. It has been facilitating the efforts towards the establishment of a network of Land Registries to be linked to a National Land Depository in Nigeria. It provides useful linkage between the Federal and State Governments on land matters on the one hand and between individual State Governments on the other hand.

The ultimate aim has been to standardize and harmonize land administration and land registration processes across all the States of the Federation after careful appraisal of the existing system. The mutual benefit has been made manifest by the existing cordial relationship between Federal and State Governments on many land administration issues. In particular the Terms of Reference of the Forum includes:

- Agreeing on ideals for uniform operation of land administration throughout the country;
- Agreeing on software standards to enable future interoperability;
- Establishing a consistent data recording format and data capture methods;
- Simplifying the preparation of maps using modern technology and establishing common cartographic features representation conventions;
- Improving the process of land administration and registration;
- Providing a platform for spreading best practices among States as a cost effective way of delivering improvement in land administration across Nigeria;
- Working towards providing a uniform environment for property ownership and land rights throughout the country;
- Generating process descriptions to help States prepare technical manuals for use in capacity building through effective staff training;
- Instilling a sense of national common purpose and providing a network for mutual support and open exchange of ideas;
- Preventing unnecessary duplication of efforts and potential waste of public money;
- Promoting a cordial relationship between the State and Federal Governments.

5.2.2 System Modernization and Implementation Standards

The Federal Government blazed the trail to introduce modern technology in its land record management system. The Federal Land Information System (FELIS) project, initiated in 2004 and commissioned in March 2006, adopted the application of Geographic Information System (GIS) in its land records computerization program. Since then different State governments,

including the Federal Capital Territory Administration, have also embarked on similar projects. Part of the effort is to ensure that the modern processes and procedures are standardized so as to encourage data exchange and interoperability since this would be a mirage unless the systems are able to work together. Presently Nigeria has about 38 land registries at both Federal and State levels with varying standards. Some Local Government Areas also operate registries within their domain sometimes with land information that is at variance with that of the State. The ultimate plan is to establish National Land Depository. The National Land Depository is intended to be the hub for all land records data and a Clearing House for land record information exchange in Nigeria. (Ukaejiofo:2009)

5.2.3 Legal Issues

Legal provisions have been identified as critical to the success of land governance in Nigeria. In this regard, some of the provisions of the subsisting Land law, the Land Use Act, especially in the sections that limit the free exercise of the rights of a land holder to transfer his interest to another without the consent of the Governor is being amended. The seeming limitation imposed by the “Governors’ consent” is however debatable but many Nigerians see it as an impeding factor to physical development and national growth. The offending Sections of the Law have been identified and recommended for review. Along the same line efforts are being made to ensure that other aspects of the Law as it affects the criteria for determining the entitlement of displaced land holders is duly reviewed. This is considered a major factor in releasing land for development as well as dousing social disenchantment by different communities. On the whole, part of the important issues is to appraise and review existing legislations on land administration and harmonise the provisions to bring them into conformity with the realities of the time.

5.2.4 International Collaboration

It is well understood that nations from time to time need support from international organizations to be able to undertake major overhaul in their land governance. It can be reported here that the effort made so far to work out a suitable approach to land governance in Nigeria has received support from a number of International Organizations. The British Council through Security, Justice and Growth Program has given various levels of financial and technical support to the Federal Department of Lands to be able to undertake the programs of the National Technical Development Forum on land administration. It has also supported various State Governments to implement their land records computerization programs. Her Majesty’s Land Registry of England and Wales is also collaborating with the Federal Ministry of Works, Housing and Urban Development to provide technical support for improved land registration. These supports have been very helpful, especially in sustaining a sense of purpose in our land administration practitioners.

6. LAND REFORM IMPLEMENTATION COMMITTEE

In addition to existing initiatives, the Federal Government recently set up a Presidential Technical Committee on Land Reform (PTCLR) to undertake the implementation of its Land Reform program. The mandate include collaborating with States to provide technical assistance for undertaking land cadastral inventory nationwide; determining individual “possessory” rights using best practices to identify and register titles to land; encouraging States and Local Government States to establish an arbitration mechanism for land ownership conflict resolutions; establishing and maintaining a national depository for land title holdings and records in all States of the Federation and the Federal Capital Territory and establishing a mechanism for land valuation in both urban and rural areas in all parts of the Federation. The Committee is working to undertake a comprehensive inventory of individual land holdings and documenting same. This is an ambitious but needful exercise and the Government is committed to it. The idea is to map and document every inch of the 923,768 sq km of land in Nigeria. This would entail a high level of collaboration with State and Local Government authorities to provide large-scale cadastral map of Nigeria. Individual States would also be encouraged to reorganize their Land Registries to interphase with the proposed National Land Depository. The ultimate aim is to introduce an effective, transparent and integrated approach to sustainable land governance in Nigeria. The Committee is expected to more effectively coordinate the individual efforts of Local Governments, States and those at the Federal level and to harmonize the outcome. It has set to work and has mapped out a number of strategies. These include:

6.1 Institutional Re-Orientation

There is no doubt that for effective land governance there is need for appropriate institutional framework and land administration infrastructure that would clearly deal with issues of land allocation and use with little bureaucratic bottlenecks. Change is the most resisted event, yet change occurs regularly. Institutional re-orientation about doing things differently may be resisted but it is important. To address this, the Committee has engaged in series of sensitization programs to draw attention to the need for the expected changes and it intends to do even more in the coming months. Such a re-orientation with a clear and unambiguous delineation of objectives and roles for agencies responsible for specific professional functions in land administration is necessary to avoid role-switching and misapplication of procedures. This has been stimulated by the mandate of the Presidential Technical Committee on Land Reform (PTCLR). It is proposed that the Committee would transmute to a National Land Reform Commission to coordinate all the land administration issues in the country and to develop and implement standards for land administration operations. It will also develop a National Land Policy document for the country. It will collaborate with the Federal Department of Lands which has already initiated action in that respect to ensure that it is accomplished timely. The policy would provide guidelines for land allocation and use throughout the Federation.

6.2 Development of a National Cadastre

The bane of land governance in Nigeria has been poor land titling infrastructure. Apart from the absence of standard cadastral base maps at the appropriate scale, poor recording, archiving and retrieval of land record information is still a problem. There is a growing realization that security of tenure and certainty of rights to land could be guaranteed with documentary evidence. This is

the major thrust in the work of PTCLR. Appropriate land use inventory is proposed to be undertaken by PTCLR to be able to have comprehensive data that covers the whole country. This also demands a comprehensive cadastral mapping of the whole country. This is to be pursued by PTCLR in collaboration with other relevant government agencies

6.3 E-Governance

Although Ministries could hardly dispense with bureaucratic processes, a number of initiatives have been undertaken at different levels of government (Federal and State) to improve the way business is done. The introduction of computerization and application of GIS in land records management have helped to reduce transaction time and access to the records. It has consequently improved efficiency and transparency. The comprehensive beneficial advantages are not yet at the optimum because of the absence of essential infrastructure. The use of title documents as collateral to secure facilities from finance institutions could only be effective when the mortgage sector is substantially developed.

E-governance, which involves a public investment in Information and Communication Technologies (ICTs) to strengthen governance processes, has two essential aims: (i) to enhance government and public institution efficiency, transparency and accountability by providing better public service and information delivery to citizens and others; (ii) to foster greater interaction between government institutions and the people, thus giving greater voice to citizens in governance processes. Nigeria is seriously pursuing e-governance and it will be very useful for land administration especially with the increasing development of market economy for the country.

7. CONCLUSION

Food security depends for its success on land and rights over it. Poverty eradication plans must of necessity take into account the land element as a major factor. Land governance aims to deliver efficient land market to support socio-economic development. Land use patterns must therefore be implemented in such a way that there are no overlaps, conflicts, contradictions and inertia in allocation. Good land governance is a panacea for sustainable economic growth and development. A management system that would entrench process transparency and improve security of title to ensure social stability is what is required. For good land governance to exist in both theory and practice, citizens must be enabled to participate in meaningful ways in decision-making processes about their rights to their land holdings. A good land governance infrastructure offers a dependable tenural system, transparent processes and procedures for preparing title documents, availability of cadastral maps, a good land administration and registration system as well as sustainable development plan. Secure access to land and shelter is necessary for economic empowerment of the citizens and for poverty reduction. A major indicator of a successful land governance is the availability of inventory and access to land records inspite of socio-cultural and economic factors, administrative practices and political choices.

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BIOGRAPHICAL NOTES

I hold a degree in Estate Management from the University of Nigeria and a postgraduate diploma in Geographic Information System (GIS). I started my career as a Pupil Land Officer in the Lands Department of the then Federal Ministry of Works in 1982. The Ministry is now known as the Federal Ministry of Works, Housing and Urban Development. I served in four different State offices of the Ministry as Head of Lands Unit and as Team Leader in special Projects.

SPECIAL PROJECTS:

- ✓ The establishment of the Federal Land Information System office under the Department of Lands and Housing in the Ministry from conception in 2003 as the Project Coordinator. Federal Land Information System (FELIS) is the land records computerization project for Federal Government land allocations through out Nigeria
- ✓ The establishment of the National Technical Development Forum (NTDF) on Land Administration as Chairman and Coordinator. The programme is a peer review and influence programme that brings all the professional Lands Officers, Land Surveyors and Land Registrars in State Lands Ministries across the country together for the harmonization and standardization of land administration processes nationwide.

- ✓ I am a co-opted member of the Presidential Technical Committee on Land Reform (PTCLR) - 2009

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Some papers previously presented are as follows:

1. *“The Future of Land Administration in Nigeria”* - A paper presented at the 2007 Cambridge Conference, Cambridge, United Kingdom, July 16 – 20, 2007.
2. *“Perspectives in Land Administration Reform in Nigeria”* - A paper presented at the Stakeholders” Forum on Land Reform organized by the Nigerian Institution of Estate Surveyors and Valuers at Transcorp Nikon Hotel, Abuja, Nigeria September 12, 2007
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