

Proprietary Land Structure in Nigeria

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Abstract- *This paper examine the proprietary land structure in Nigeria which refers to the manner or system in which land is owned, a micro dimensional perspective of land tenure system. Ownership of land is the most comprehensive and complete relation that can exist of enjoyment, management and disposal over property. The proprietary land unit is for decision making in the national land honey-comb. Land reform is concerned with changing the institutional structure governing man's relationship with the land, involving intervention in the prevailing pattern of land ownership, control and usage in order to change the structure of holdings, improve land productivity and broaden the distribution of benefits. Land is essential for every human activity on earth as it is the source of all material wealth. In order to regulate the ownership, use and development of land and land resources, nations the world over have instituted land ownership systems aimed at consistent balancing of the interests of the government, the land owning class and the landless class. The paper argues that land ownership structure in Nigeria has evolved over the years until 1978 when a single land policy document, otherwise known as the Land Use Act of 1978 was established to harmonize and regulate land ownership in the country. The paper further contends that present land ownership system in Nigeria as enshrined in the Land Use Act of 1978 has socialist inclinations with excessive state control of land ownership, use and development. The paper concludes that such land system cannot effectively support private sector-driven enterprise and development initiatives as it creates too much bureaucracy in the documentation of land transactions, land registration and land titling. It recommends an urgent amendment of the nation's land use Act to facilities access to land with ease for various purposes.*

Indexed Terms- *land; Proprietary Land unit; Proprietary Land structure, land ownership, Land system; Land Use Act; Land Reform; Nigeria.*

I. INTRODUCTION

Land is a crucial economic resource and source of livelihood in the world particularly as the case may be in Nigeria as people depend on land for a living. A Traditional Nigerian has always viewed land as the fundamental element of their economic well-being as well as part of social and cultural identity. Land provides the physical substratum for human activity; it is the essential base of all social and commercial interaction.

This paper explores the issues of land ownership in Nigeria. Ownership is the owner's title to these rights is superior and paramount over any other rights that exist in land in favour of other persons, in negative language his right to the enjoyment, management and disposal of the thing must not be dependent upon, or subordinate to that of any other person. Proprietary means a relationship to a proprietor or owner; it also means of relating to, or involving ownership. Proprietor is the owner of an estate or interest in land. Proprietary refers to property; things that are owned by individuals or businesses. The proprietary land unit is the decision-making unit which is fundamental to all positive decisions about land use and comprises two elements, the run of property rights and the area of physical land to which they pertain (Denman and Prodano, 1972). Any land system may portray categories of estates or rights in land. Right of ownership of land in Nigeria stated in Sections 43 and 44 of the 1999 constitution provide: 43: subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. The land system of a given society is the manner in which land is owned and possessed. It is an institutional framework within which decisions are taken about the use of land, embodying that legal or customary arrangement whereby individuals or groups or organizations gain access to economic and social opportunities through land (Udo, 2003). The land system is also constituted by the rules and procedures which govern the right and

responsibilities of both individuals and groups in the acquisition, use and control of land. Denman (1978) argued that all societies of whatever culture and political creed have land systems woven of property rights. These property rights lend form to the proprietary land units. The proprietary land unit is the decision-making unit which is fundamental to all positive decisions about land use and comprises two elements, the run of property rights and the area of physical land to which they pertain (Denman and Prodano, 1972). Any land system may portray categories of estates or rights in land. These rights are absolute or non-derivative interests and derivative interests. The absolute interests are those rights in land that confer upon their holders unconditional interests in perpetuity and in terms of quality, it is regarded as the most superior form of ownership. The absolute interests confer absolute ownership rights and as such allow for the highest scope of proprietary decisions as to the use and of land. The derivative interests on the other hand are interests that have been derived or carved out from the larger estates or superior estates (Udo,2003).They are inferior in quality and include leaseholds, life interests, kola tenancy, mortgage, borrowed interests, pledges, among others (Nwabueze,1972). The land ownership structure in Nigeria is based on the absolute and derivative interests. The structure of ownership of these interests in the country has evolved through three major periods. These are the pre-colonial, colonial and post-colonial periods.

1.1 Land Ownership in Nigeria before Colonial Rule

The predominant land tenure system in Nigeria during the pre-colonial period was the customary land tenancy where land holdings were owned by villages, towns, communities and families. Land was deemed not owned by individuals but by communities and families in trust for all the family members (Omuojine, 1999).

The legal estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family of which many are dead, few are living and countless members yet unborn. Thus individuals had no such interest as the fee simple absolute in possession as the actual ownership of land or absolute interest was vested in the community itself. Interests

or rights of individuals in community land were derivative interests. According to Dosumu (1977) and Aniyom (1978), the customary land tenure in the areas comprising the Southern States of Nigeria before colonial rule was held in the following ways:-

- (i) Communal Lands
- (ii) Stool or Chieftaincy lands
- (iii) Family lands
- (iv) Individual or Separate property

The community lands comprised lands which the entire community has an individual or proprietary interest. Such community lands were supervised and administered by the chiefs and traditional rulers. The stool or chieftaincy lands were found mostly among the Yoruba and comprised the Oba's palace and the surrounding lands. The family lands were lands that were vested in the members of the family as a corporate group. Individual property comprised lands whose title was vested on individuals and was obtained by partitioning of the family land to individual members of the family. However, during the pre-colonial period, land held under customary tenure cannot be sold or alienated. Such an act was generally regarded as capable of depriving the future generations of the opportunity to acquire land (Bardi, 1998).

1.2 Land Ownership in Nigeria during Colonial Rule

The land ownership structure in Nigeria under colonial rule was designed to suit the motives of the British imperialists. Historians and scholars including Dike (1960); Ade-Ajayi (1962); Anene (1966); Oyebola and Oyelami (1967) and Onwubiko (1976) have argued that European conquest and occupation of West Africa and particularly British colonial rule in Nigeria were based on two main motives. These were initially economic interest and later governance. Oyebola and Oyelami (1967) succinctly narrated that: *"The British occupation of Nigeria began on a very small scale. It first began along the coast and subsequently went from strength to strength until it had spread all over the country. The occupation was progressive rather than sudden. Traders led the way and their motive was purely economic. They came neither to acquire territories nor to administer the country. But there is no doubt that while they were trading, they were spreading the influence of their country at the same time, thereby paving way for the*

subsequent occupation of the country with which they traded ”

As a major factor of production, land was inevitably required by the colonial authorities to achieve their economic, social, and political objectives. The British merchants who came to the country purely on economic motive required land to establish their merchandise. The National African Company and its successor, the Royal Niger Company required land to expand its business in Nigeria. The colonial governors also required land for public purposes. Because land ownership in pre-colonial Nigeria was communal, the colonial authorities initiated laws and regulations governing land ownership, land use and development among others to enable them acquire and convey titles to land for the purposes of commerce and governance. Principal among these legislations were the Treaty of cession (1861), Land Proclamation Ordinance (1900), Land and Native Rights Act (1916), Niger

Lands Transfer Act (1916), Public lands Acquisition Act (1917), Native lands Acquisition Act (1917), State Lands Act (1918) and Town and Country planning Act (1947). The Treaty of Cession of 1861 became the principal of all the treaties signed by the colonialists with traditional chiefs in Nigeria. According to Elias (1971), the legal effect of the cession of 1861 was that the root title of the land comprised in the Treaty was passed to the British crown. In 1900, the Land Proclamation Ordinance was enacted by Lord Lugard .The legislation disregarded the principles of native law and custom and provided that title to land can only be acquired through the High Commissioner. The Land Proclamation Ordinance was enacted to kill the institution of family and communal land ownership by facilitating the acquisition of title to land through the High Commissioner. The Land and Native Rights Act was enacted in 1916 to vest in the colonial Governor all rights over all native lands in Northern Nigeria. Sections 3 and 4 of the Act provided as follows:-“(3) *All native lands and right over the same are hereby declared to be under the control and subject to the disposition of the Governor, and shall be held and administered for the use and common benefit of the natives of Northern Nigeria and no title to the occupation and use of any such lands shall be valid without the consent of the Governor .*

(4) *The Governor, in exercise of the powers conferred upon him by his Proclamation with respect to any land shall have regard to the native laws and customs existing in the district’ in which such land is situated”*. As presented by Elias (1971), later sections of the Act further provided, inter-alia, for the Governor’s power:-

- (a) To grant rights of occupancy to “natives” as well as to “non- natives”,
- (b) To demand and revise rent for such grants;
- (c) To render null and void any attempted alienation by an occupier of his right of occupancy without the Governor’s consent.
- (d) To revoke the grants to occupiers for “good cause”.

However, the land and native Rights Act of 1916(with later amendments) was repealed and replaced by Land Tenure law of 1962, which governed land tenure in Northern Nigeria up till 1978, before the promulgation of the Land Use Decree(now Act). Also in 1916, the Niger Lands Transfer Act was enacted. This law transferred the rights of the then Royal Niger Company in lands acquired by it and vested such rights in the British crown. The major legal effect of the Act was that lands held by the company based on treaties and agreements made with the people of Nigeria were transferred to the colonial government, thereby creating some landownership problems for the people. In 1917, the Public Lands Acquisition Act was enacted to empower the colonial Governor to acquire lands when required for public purposes. This law covered the then colony and protectorate of Nigeria. It empowered the colonial government to compulsorily acquire land whether occupied or unoccupied and provided for non-payment of compensation if unoccupied lands were acquired. Also in 1917, the Native Lands Acquisition Act was enacted to regulate the acquisition of land by aliens from the people of the southern provinces of Nigeria. It provided in section 3 as follows:-

“3(a) No alien shall acquire any interest or right in or over any lands within the protectorate from a native, except under an instrument which has received the approval in writing of the Governor,

(b) Any instrument which has not received the approval of the Governor as required by this section shall be null and void.” Also, section 3A provided as follows:-“ 3A Where any interest or right in or over

any land has been acquired by an alien from a native with the approval in writing of the Governor as provided for in Section 3, such interest or right shall not:-

(a) Be transferred to any other alien without the approval in writing of the Governor. Section 4 of the Act provided that it shall be unlawful for any alien or for any person claiming to be an alien to occupy any land belonging to a "native" unless the right of the alien to occupy or authorize the occupation of the land is evidenced by an instrument which has received the approval of the Governor (or his delegate) in writing. Any default is punishable by fine or imprisonment or both. An alien was defined in section 2 of the Act as "any person who is not a native of Nigeria". The Native Land Acquisition Act 1917 had, since the advent of the federal system of government in Nigeria, been replaced by the Native Land

Acquisition Law of 1952 in the Western and Mid-Western states and by the Acquisition of Land by Aliens Law of 1956 in the Eastern states.

In addition, the State Lands Act was promulgated in 1918 to regulate the use, occupation and development of crown (state) lands in which the whole public have an interest. Under section 2 of the Act, "State land" means all public lands in the Federation which are for the time being vested in the Governor – General (at that time) on behalf or for the benefit of the state as the case may be, and all lands heretofore held or hereafter acquired by any authority of the federation for any public purpose or otherwise for such benefit, as well as land so acquired under any Act of parliament, but does not include lands which although acquired and so held are subject to the Lands and Native Rights Act. The Act restricted the sub-lease of occupiers of state lands in the country.

In 1946, the Town and Country Planning Act was enacted as a law of general application. The law came into force on 28th March, 1946. It was a law enacted to make provision for the re-planning, improvement and development of the different parts of Nigeria. The law provided for the establishment of planning Authorities to regulate land use, planning schemes and development control. This law was replaced by the Nigerian Urban and Regional planning Decree (now Act) of 1992. However, while these laws were enacted

to make lands available for use by the colonial government, they were implemented to eliminate the pre-colonial land tenural system in the country and facilitate private ownership of land, particularly in Southern Nigeria. Thus with the advent of colonial rule, commerce and commercialization, it had become possible for individuals to own private land and deal with such land liberally (Omuojine, 1999) and subsequently, land began to be sold, leased or mortgaged to individuals or groups (Bardi, 1998). Elias (1971) summarized the land ownership system in Nigeria during the colonial rule and reported that:- "in the result, therefore, the Government (the colonial government) has pursued a policy of restricting alienation of land in the former Southern provinces only to dealings among the people themselves, while frowning upon any out- and- out transfer to aliens. No claim to absolute ownership has been made, nor has any rigid distinction been drawn between crown and other lands except, perhaps that whereas in the case of certain lands taken over from the Royal Niger Company no compensation to any occupier will be paid for their appropriation to public purposes, compensation is as a rule paid in the case of all other lands within the former Southern provinces. This contrasts markedly with the Northern policy of paying only for unexhausted improvement by native occupiers and not for the acquisition of the land itself. A corollary of this has been that while in the North the Government has formally laid down the policy that no freehold title can exist in land but only a right of occupancy, there has been a benevolent neutrality on the part of the Government with respect to the form which titles to land in the former southern provinces should take".

1.3 Land Ownership in Nigeria since Independence
Nigeria gained independence from colonial rule in 1960 and became a republic in 1963. After independence, private ownership of land by individuals, families and communities was the predominant land tenure system in the Southern States of Nigeria while all lands in the territory comprising the Northern States of Nigeria were regarded as owned by the state, based on the provisions of the Land Tenure Law of 1962. Two principal legislations have been enacted to regulate land ownership in Nigeria since independence. These are:-

(i) The Land Tenure Law of Northern Nigeria of 1962

(ii) The Land Use Act of 1978

1.3.1 The Land Tenure Law of 1962

This law contains the basic principles as those in the Land and Native Right Act of 1916. It was enacted to replace the Land and Native Rights Act of 1916. The Land Tenure Law provided that all lands in each of the states in Northern Nigeria whether occupied or unoccupied are “native lands” and are placed under the control, and are subject to the disposition of the Minister responsible for land matters, who holds and administers them for the use and common benefits of the “natives”, that is to say, persons whose fathers were members of any tribes indigenous to each state in Northern Nigeria. This means that all other persons who are not indigenous to each of such states are “non-natives”. Under this law, no title to the occupation and use of any such lands by a non-native is valid without the Minister’s consent. The natives of Northern Nigeria were granted right of occupancy to land for a limited number of years. For the purpose of the law, a right of occupancy means a title to the use and occupation of land and includes both customary and statutory right of occupancy. An occupier enjoys exclusive right to his land against all persons other than the Minister. He may, with the Minister’s consent, sell, mortgage or transfer any lawful improvement on the land. Also, on the determination of a statutory right of occupancy, all the improvements on the land revert to or vest in the Minister without payment of any compensation to the holder. Alienation of a statutory right of occupancy is prohibited without the Minister’s prior consent. The Land Tenure law of 1962 was repealed and replaced by the Land Use Decree (now Act) of 1978.

1.3.2 The Land Use Act of 1978

Land Use Act No. 6 of 1978 was promulgated into law with effect from 29th March, 1978 as the nation’s land policy document. Since then, it has remained so in the country till date. To all intents and purposes, the Act regulates the ownership, alienation, acquisition, administration and management of land within the Federal Republic of Nigeria. Section 1 of the Land Use Act vests all land comprised in the territory of each state in the Federation of Nigeria in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.

Section 5(1) of the Act empowers the Governor of a state to grant statutory right of occupancy to any person for all purposes in respect of land, whether or not in an urban area and issue a certificate of occupancy in evidence of such right of occupancy in accordance with the provisions of Section 9(1) of the Act. Also, Section 5(2) of the Act provides that “Upon the grant of a statutory right of occupancy under the provisions of sub – section (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.” Thus, the statutory right of occupancy granted by a Governor is presently the highest right to land in Nigeria. This right of occupancy is a right which allows the holder to use or occupy land to the exclusion of all other persons except the Governor and is granted for a maximum holding period of 99 years, subject to the payment of ground rent fixed by the Governor throughout the holding period. Sections 21 and 22 of the Act prohibit alienation, assignment, mortgage, transfer of possession, sub – lease or otherwise howsoever customary or statutory rights of occupancy in Nigeria without the consent and approval of the Governor of the state where such right of occupancy was granted. The provisions of Sections 21 and 22 of the Act are as follows: 21. *It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever (a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or (b) in other cases without the approval of the Local Government* 22. *(1) It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained; Provided that the consent of the Governor; (a) shall not be required to the creation of a legal mortgage, over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor; (b) shall not be required to the reconveyance or release by a mortgage to a holder or occupier of a statutory right of occupancy which that holder or*

occupier has mortgaged to that mortgagee with the consent of the Governor;

(c) to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.

(2) The Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor under sub-section (1) of this section may be signified by endorsement thereon.

Statutory right of occupancy as interpreted in Section 50 of the Act is a right of occupancy granted by the Governor under the Act for a maximum holding period of 99 years. Customary right of occupancy as also interpreted in that section of the Act is the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under the Act. Also, Section 28(1) empowers the Governor of a state to revoke a right of occupancy for overriding public interest, subject to the payment of compensation for the unexhausted improvements based on the provisions of Section 29 (4) of the Act.

II. CURRENT ISSUES IN LAND OWNERSHIP IN NIGERIA

As reflected in its major provisions, the Land Use Act of 1978 was enacted to nationalize land ownership in Nigeria as well as facilitate effective state control of the use and development of land. In the implementation of the Act in the past three and a half decades or so, the Act has progressively become a clog in the wheel of economic growth and development in the country. Currently, only an average of 23.1% of households in Nigeria own land.

Utuma (2008) argued that the promulgation of the Land Use Act was aimed at redirecting the general philosophies of pre-existing land tenure systems in Nigeria through the application of a uniform statutory regulation of ownership and control of land rights and to stimulate easier access to land for greater economic

development as well as promote national social cohesion. In an attempt to harmonize the different land tenure systems previously existing in the country, the Act has created multiple forms of tenure resulting in insecurity of right of occupancy granted under the Act, excessive bureaucracy in obtaining Governor's consent and approval for land transactions and certificate of occupancy, among other shortcomings. This excessive bureaucracy has made land registration in the country very prohibitive.

A land ownership system which restricts the citizens' right to occupy land, buy, let or sell their land without obtaining the consent and approval of their Governors as provided in Sections 21 and 22 of Nigeria's Land Use Act is anti-people and oppressive and cannot enhance sustainable development in any egalitarian society. Undoubtedly, the Act has also hindered the effective functioning and operation of the property markets in the country. By virtue of Section 1 of the Act, individuals cannot own freehold interest in land in Nigeria. Individuals can only be granted a right of occupancy for a maximum holding period of 99 years, subject to payment of ground rent to the government as fixed by the Governor. This has made private land ownership in the country insecure. It has also affected the efficiency of the property markets. To all intents and purposes, this right of occupancy is a leasehold interest. The muddle made by this interpretation on the property markets in the country has resulted in ignorant trading and transfer of property rights by professionals and laymen alike as people continue to sell freehold interests in land which they don't have within the context of the Act. The vesting of all land comprised in the territory of each state in the Federation of Nigeria in the Governor of that state implies that the Governor holds the absolute interest in land in each state of the Federation. By virtue of Section 1 of the Act, individuals cannot own freehold interest in land in Nigeria. Individuals can only be granted a right of occupancy for a maximum holding period of 99 years, subject to payment of ground rent to the government as fixed by the Governor. This has made private land ownership in the country insecure. This is the reason why compensation is not paid for bare land without unexhausted improvements within the provisions of the Act, except for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked. Besides,

compensation payable on revocation of right of occupancy by the Governor is limited to unexhausted improvements as provided in Section 29(4) of the Act and does not include other pertinent claims for severance and injurious affection. Also, the Land Use Act of 1978 lacks adequate capacity for conflict resolution with respect to disputes arising from unjust and unfair revocation of rights of occupancy granted under the provisions of the Act. This is evident in Section 47 of the Act which states as follows:-

1. This Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into:-

(a) Any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of this Act; or

(b) Any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or

(c) Any question concerning or pertaining to the right of a Local government to grant a customary right of occupancy under this Act.

2. No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.

Thus, the court and even the Constitution of the Federal Republic of Nigeria are excluded from inquiring into any question pertaining to the granting of land rights by the Governor and payment of compensation in cases of compulsory land acquisition in any part of the country.

CONCLUSION

This research paper has examined the concept of land ownership in Nigeria. It looked closely at the various ways land was administered prior to the 1978 land use Decree. The Decree signaled the dawn of a new era in land administration in terms of making land available for both commercial and private use, it also paved the way for land usurpation especially by the government who now controls land.

Having examined the land ownership system in pre-colonial Nigeria was communal. Land was deemed not

owned by individuals but by communities and families in trust for all the family members. The legal estate under customary land tenancy is vested in the family or community as a unit. Because land ownership in pre-colonial Nigeria was communal, the colonial authorities initiated laws and regulations governing land ownership, land use and development among others to enable them acquire and convey titles to land for the purposes of commerce and governance. However, while these laws were enacted to make lands available for use by the colonial government, they were implemented to eliminate the pre-colonial land tenure system in the country and facilitate private ownership of land, particularly in Southern Nigeria. Thus with the advent of colonial rule, commerce and commercialization, it had become possible for individuals to own private land and deal with such land liberally and subsequently, land began to be sold, leased or mortgaged to individuals or groups.

The Land Use Act of 1978 was enacted to redirect the general philosophies of pre-existing land tenure systems in Nigeria through the application of a uniform statutory regulation of ownership and control of land rights and to stimulate easier access to land for greater economic development as well as promote national and social cohesion. In an attempt to harmonize the different land tenure systems previously existing in the country, the Act has created multiple forms of tenural resulting in insecurity of right of occupancy granted under the Act, excessive bureaucracy in obtaining Governor's consent and approval for land transactions and certificate of occupancy, among other shortcomings. The multiple forms of tenure created by the Act have also generated confusion concerning legal estates which can be owned in the Federal Republic of Nigeria. With the privatization of most public enterprises hitherto owned by the government, coupled with the deregulation of major sectors of the economy, Nigeria is gradually shifting from pseudo-socialism to capitalism. This implies that the economy will be more private-sector driven than before. The present land ownership system in Nigeria as enshrined in the Land Use Act of 1978 has socialist inclinations with excessive state control of land ownership, use and development. Such land system cannot effectively support private sector-driven enterprises and development initiatives as it creates too much bureaucracy in the documentation of

land transactions, land registration and land titling. Consequently, there is urgent need for the amendment of the nation's Land Use Act to eliminate all legal ambiguities currently associated with private land ownership in the country and to facilitate access to land with ease for various purposes. Such amendment should ensure that Nigerians can own freehold interest in land in the country and can transact with their land without the consent of the Governor. It should also strengthen the government to effectively exercise the power of eminent domain in the acquisition of land in any part of the country for public over

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