

LAND RIGHTS CHARACTERISTICS AND ACCESS TO LAND: IMPLICATIONS ON FOOD SECURITY IN NIGERIA

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ABSTRACT

In recent times, food security issues have come to the front burner on national discussions in Nigeria sequel to the pride of place given to it by the Yar'Adua-Jonathan administration in its seven point agenda. The paper examined land rights characteristics and access to land and their implications on food security in Nigeria. It explored various strategies to gain access to land and the effects of land rights characteristics (discriminatory (gender, age, and nationality), determinable, subject to legal and town planning apparatus, transferable, derivable, useful and controllable) on access to land which eventually affects food security. It also examines the consequences of food insecurity on the nation such as dependency on other nations, health crisis, trade imbalance, hunger/famine, social and political crisis, rise in the prices of food etc. It is the candid desire of this paper to trigger off the zeal and interest, not only to expedite work on the review process of the land use act, but for those entrusted/saddled with the responsibility of reviewing the act and implementation thereafter, to consciously employ their wits and patriotism in doing so.

Keywords: *Land rights, Access to land, food security, Land rights characteristics, Land tenure, Food insecurity.*

INTRODUCTION

The issue of food security in Nigeria has attracted a lot of commentaries especially since the pronouncement by the late president Umaru Musa Yar'Adua of the seven point agenda. Food security and agriculture was given a prominent place, as it is widely believed that there is global food shortage and that many more people will die of hunger and starvation as a result of this shortage. There has been increased food insecurity and impoverishment because of the increasing cost of food for the majority of the poor and the concentration of consumption among the relatively wealthier and better-endowed countries, regions and social groups with access to land and incomes within and outside the agricultural sector. Nigeria as a member of the global community has also realized a sudden downturn in food production and supply as a result of the effect of land tenure system on food production.

The traditional land holding system gives room for a diminutive proportion of land made available for cultivation of food. It is characterized by a situation where several interests subsists on a small parcel of land. The land use act of 1978 which was introduced to salvage the situation has also been found wanting in ensuring that land is made available to users. Hence, access to land in Nigeria is a major threat to food security in the country. The nature of land rights in the country is seen as grossly responsible for the inaccessibility to land.

It is against the above background that the paper examines land rights characteristics and access to land, their implications on food security in Nigeria.

CHARACTERISTICS OF LAND RIGHTS

Land rights have the following characteristics which distinguishes it from other form of rights. These are deduced from the types of land rights above.

- i) Land rights is subject to customary and statutory regulations
- ii) It confers the holder with the power to use the land.
- iii) It also confers the holder with the power to control by making decisions on how the land should be used, deciding what crops should be planted etc
- iv) It confers the holder with the power to transfer the rights through sales, mortgage, lease, donation etc.
- v) It is determinable
- vi) It is inheritable
- vii) It is taxable

In Nigeria, the characteristics of land rights are pruned to:

- a) Discrimination in terms of gender. Customary land rights in Nigeria do not confer a woman the right to use, control or transfer land. This is also a reflection of the land use act of 1978.
- b) Discrimination against aliens. To this, Emmanuel (n. d) writes thus: "The land use Act has no provision for ownership of land by persons who are not Nigerians. Rather, in section 46 (1) (a) the act empowered the National Council of States to inter alia, make regulations for the purpose of carrying the Act into effect and particularly with regard to the following matters".
- c) Delays occasioned by statutory provisions that require the consent of the State Governor where the property is located before the property could be mortgaged, sublet, assigned, sold, etc.
- d) Political Interference: In most cases, people elected as governors abuse their positions by using such positions to settle political scores. They use their power as conferred by the Land Use Act to compulsorily acquire land belonging to their opponents or at times revoke their certificates of occupancy and in other instances, they delay granting consent on the issuance of such rights.
- e) Continuous division by splitting. In this case, property rights are split into such portions that could render the land useless or not fit for alienation. This is common with customary rights where holdings are small and diminutive.

TYPES OF LAND RIGHTS

There exist different types of rights exercised over land. Among the varieties are:

Usufructuary right: This is the right to use and profit from property vested in another, so long as the user (usufructuary) does not change the substance of the property. It would include an easement but not a profit a prendre (Real Estate Dictionary, n.d). Another source defined this right as a system of land tenure where land is communally owned and people have free access to use it.

Right of Occupancy: This type of right is documented in a certificate of occupancy (CofO) and refers to the right granted to a holder to occupy a property within a limited/defined time frame. In Nigeria, this right came with the land use Act of 1978 which recognizes the right of occupancy as the only interest in land in Nigeria according to Okoronkwo (2009), "the right inherent in the certificate of occupancy does not confer proprietary rights of ownership of land to the holder but of occupancy and use only".

Residual Rights: According to Onwuchekwa (1999), this right applies when a land is under pledge. The individual to whom the land is pledged continues to use the land perpetually until the land is redeemed.

Property Right: According to a Food and Agricultural Organization (FAO, 2003), the right that a person has in an object such as land may be considered as property... In the case of land tenure, it is sometimes described more precisely as property rights to land. Mbadiwe (1998) adds that land use decisions can only be taken and carried out by people with property rights in land. Property right could be said to confer on its holder, proprietary right as it were.

Symbolic Right: This applies where land has been donated for development project without any monetary attachments but mere recognition of the donor (Onwuchekwa, 1999).

Grazing Rights: This is a form of right granted to people to graze on another person's land (Onwuchekwa, 1999; FAO (n. d)).

Communal Rights: A right of commons where each member of a community has a right to use the holdings of the community independently (FAO (n. d)).

Freehold and leasehold rights: By and large, land rights could be classified as customary rights and statutory rights. Leasehold, freehold and rights of occupancy are examples of statutory rights. They are defined by clearly stated laws/regulations. Customary rights such as usufructuary rights, symbolic rights, grazing rights, communal rights, property rights etc, are derivatives of customs and traditions. In some instances, some of these rights find their places in both categories.

These rights are expressed through use, control and transfer in the following ways:

- Right to use land
- Right to exclude unauthorized people from using the land
- Right to control how land will be used
- Right to derive income from the land
- Right to protection from illegal expropriation of the land
- Right to transmit the rights to the land to one's successors (inheritance right)
- Right to alienate all rights to the entire holding (for instance, through sale), or to a portion of the holding (for example, by subdividing it).
- Rights to alienate only a portion of the rights (that is, through a lease)
- Residuary rights to the land (that is, when partially alienated rights lapse

(such as when a lease expires), those rights revert to the person who alienated them.

- Rights or claim to divert use. This applies to land inherited, purchased or acquired as exchange or gift (Onwuchekwa, 1999).
- Right of indirect economic gain. This applies when a parcel of land is given out to a person for agricultural purposes and the proceeds are shared with the land owner (Onwuchekwa, 1999).
- Rights to enjoy the property rights for an indeterminate length of time.
- Duty not to use the land in a way that is harmful to other members of society.
- Duty to surrender the rights to the land when they are taken away through a lawful action (for instance, in a case of insolvency where the right is held by the creditors, or in the case of default on tax payments where the right is held by the state).

Rights could be legal or equitable. A legal right is enforceable against the whole world in law, legal rights are therefore said to be rights in rem. Equitable rights are rights against certain persons only.

ACCESS TO LAND IN NIGERIA

Access to land refers to the means and ways by which individuals or groups obtain rights to use, control and transfer land (property). According to FAO (nd), access to land for the rural poor is often based largely on custom. By extension, the urban population depends largely on statute for access to land. There are different strategies by which people gain access to land, thus:

- Purchase (in this case, there is transfer of title)
- Lease (rents are paid to owner)
- Share cropping (the user cultivates the land but the produce is shared between the user and owner of land in an agreed proportion).
- Inheritance by heirs of the owner.
- Squatting illegally on land.
- Systematically through land reform policies.
- Adverse possession or prescription (by acquisition of rights through possession for a prescribed period of time).
- Compulsory acquisition (by government)
- Traditional means

Individuals, corporate organizations and even government gain access to land in Nigeria through all the above mentioned strategies. Through purchase, a good percentage of interests on land in the country have changed hands. The

owner of the land receives money from the sales and uses the proceeds for other investments. The land use act of 1978, the major land statute in Nigeria, requires that this transaction be done by the consent of the state governor in the state where the land situates. This is clearly stated in section 22 of the act (FRN, 1978; Okoronkwo, 2009). Through leasing, a leasee can gain access to land belonging to another, the lessor. Kalu (2001) states that a lease is created when someone with a superior interest grants to another person, usually called the tenant or lease, the right to exclusive possession, occupation or enjoyment of a piece of land or accommodation for a definite term or period. This is why leasehold estate/right is also called term of years (Kalu, 2001).

The land use act 1978 does not recognize the doctrine of estates (freehold and leasehold) as seen in section 1 of the act. Lease arrangements conjure rents paid to the property owner. Share cropping is another strategy by which access to land is granted/ gained. By this means, the user cultivates the land but the produce is shared between the user and owner of land in an agreed proportion. In Nigeria today, this strategy is not common as it is restricted to customary property. Share cropping used to be a common practice in the agricultural crop belts of Nigeria.

Another way of granting access to land in Nigeria is through inheritance by heirs of the owner. This gave rise to a form of free holding called fee tail estate. This too is common in the customary land rights system. Following the introduction of the land use act of 1978, the doctrine of estate was no longer tenable. The estate and inheritance taxes paid in Nigeria are used in clearing any legal encumbrances that may prevent access to any real estate by the heirs apparent. Estate tax is a tax levied on the right to transmit the property of a deceased to his heirs while inheritance tax is a tax on the right to receive property of a deceased by his heirs (Igwe-Kalu, 1998: 41).

Squatting is an illegal manner by which people gain access to land. In Nigeria, this is common in most urban areas like Abuja, Lagos, and Port Harcourt, etc. Population pressure on an urban area forcing demand for accommodation to be far above supply is one factor noted to be responsible for this illegality. Such developments result in squalors or shanty towns as with Maroko in Lagos, Gwagwalada in Abuja, Riverside in Port Harcourt, etc. Governments' responses to these squalors in recent years have been quite displeasing. Governments have reacted by pulling down these structures resulting in displacement of hundreds of thousands of people who force their way to neighbouring villages/ towns or relocate to their hometowns. Through land reform measures, government has

also enabled some degree of access to land in Nigeria. Prior to the 1978 land use act, the traditional land tenure system barred many from gaining access to land as only people from land owning families could access land in Nigeria. This kept investors and developers off the possibility of entering into land especially in southern Nigeria. Recent attempts in Nigeria to reform the land tenure system in the country is not also unconnected to the fact that access to land is paramount to national development (Agwu, 2009).

Access to land is possible in Nigeria through adverse possession or prescription. Here, rights are acquired through possession for a prescribed period of time. Mortgage transactions can grant such access to land by way of foreclosure in case the mortgagee fails in the mortgage terms. Compulsory acquisition by government as empowered by the land use act of 1978 has enabled access to land in Nigeria by government, and of individuals through government. In some states of the federation, the state governments acquire expanse of fertile land and then parcellate them for farmers to cultivate crops. This is usually done to encourage food security. Benue state seems to be one of the states that practice this in Nigeria. Land for building is also done this way but it is usually done such that the developer pays a modicum amount for the land as ground rent. In Abia state, Orji Uzor Kalu's regime did this as a form of public private partnership (PPP) deal in housing delivery (Ururuka, 2004). People therefore gained access to land through this means. The Ehimiri housing estate in Umuahia is one of the housing estates developed through this means.

Through donations or gifting of land, people in the traditional societies gained access to land in Nigeria. This was not required to be in a formal written form as far as witnesses were available during the transfer and acceptance of the gift by the donee. Under general law however, a gift can be affected only through deed of gift, and or by declaration of trust made in writing and signed by the donor or his agent. People can also obtain access to land through customary/traditional means. Through traditional means, land which is bestowed under the custody of the traditional chiefs could be accessed. These rights of access may have their origin in the use of the land over a long period. They are often rights developed by ancestral occupation and by the use of land by ancestral societies. In such cases, it is through the act of original clearance of the land and settlement by ancestors that rights are claimed. According to a daily trust source, "Traditional chiefs, whose authority over land derives from the Native Land Law of 1962, continue to play a dominant role in some settlements..." The source cites Nuhu (2006) as saying that "people obtain access to land through the traditional chiefs

in these areas of Minna which constitutes about 55%, 35% through state allocation and 10% through transfer". This implies that in some parts of Nigeria, access to land is possible through this traditional means which this example gives a preponderant percentage. State allocation in tandem with the provisions of the Land Use Act of 1978 and transfers emanating from sales, purchases, gifts, inheritance, leases etc are other means by which people gain access to land in Nigeria. These means have been discussed earlier.

Despite these numerous ways Nigerians gain access to land, some of which take a long time to mature, accessibility to land remains a serious problem in the country. The process of obtaining title to land is cumbersome. As aforesaid, this ignited the desire to reform the land tenure system (land reform) by the late Yar' Adua's administration even as his successor, Goodluck Jonathan, still believes in the reform agenda of his late boss and predecessor. It is note-worthy that access to land is a necessary condition for industrial, social, economic, political, physical and overall development of the country.

FOOD SECURITY AND ACCESS TO LAND

Food security has attracted much attention in Nigeria and the world in general. For this reason, various definitions have been given to the concept. Food Security refers to the availability of food and one's access to it (Wikipedia, 2009). According to FAO (2003), Food security exists when all people at all times have access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The availability of nutritionally sufficient and safe food can also be seen as food security. An assured ability to acquire acceptable food in socially acceptable ways, that is, without resorting to emergency food supplies, scavenging, stealing or other unwholesome practices. Amanze and Adiaha (2009) consider a tripod stand for food security thus: food availability, food access and food use.

Africanloft (2009) places the emphasis on the development of modern technology, research, financial injection into research, production and development of agricultural inputs leading to a 5 to 10 fold increase in yields and production of which the late president Yar' adua - Jonathan administration also emphasised. This is supposed to result in massive domestic and commercial output and technological knowledge transfer to farmers. Farouk (2009) identifies critical areas for intervention to include:

- Strengthening agribusiness through institution of profitability and price support mechanism
- Land tenure changes

- Aggressive development and supply of new land
- Strengthening farmers support groups through commercial farmers
- Improvement of rural access infrastructure
- Restructuring of the River Basin Development Authorities.

EFFECTS OF LAND RIGHTS CHARACTERISTICS ON ACCESS TO LAND

Negative land rights characteristics in Nigeria affect access to land by investors and developers in the following areas:

- i) It limits the number of persons using the land since women and aliens are denied occupancy rights.
- ii) It slows down development as investors who are ready and willing to invest do not have access to land.
- iii) It results in food insecurity as shortage in food supply resulting from uncertainties in food production, occasioned by lack of access to land, brings it about.
- iv) Political interference by governors and their cronies who abuse the power bestowed on them to revoke Certificate of occupancy (CofO) or to compulsorily acquire land makes investment on land in Nigeria very risky, resulting in a fall in investment thereof.
- v) Multiple property taxes inhibit investments in land. Hence, inordinate taxation on land reduces access to land.
- vi) Foreigners who have the potential to invest heavily on land thereby creating employment, food security and overall development frustrated. Because the law of the land does not favour them. They don't enjoy access to land thereby denying the country the aforesaid advantages.
- vii) The process of obtaining title documents in land in Nigeria is slow, cumbersome, rigorous and frustrating, coupled with corruption; the process is costly as well. Consequently, it slows down access to land and hence, development.

IMPLICATIONS OF LAND RIGHT CHARACTERISTICS AND ACCESS TO LAND ON FOOD SECURITY IN NIGERIA

Lack of access to land in Nigeria as reflected in this article is inimical to food security. Many go without hope of food each day and hunger is imminent. This has prompted the Nigerian government to throw its borders open to importation of major food items like rice, beans, maize etc to help reduce the effects of high demand of food on the people of the country. Also, in July 2010,

President Goodluck Jonathan ordered the immediate release of grains from the national grains reserves to mitigate the hunger situation in the country.

An Economic Commission for Africa (ECA) source reveals that there has been increased food insecurity and impoverishment because of the increasing cost of food for the majority of the poor and the concentration of consumption among the relatively wealthier and better endowed countries, regions and social groups with access to land and incomes in an outside agriculture. The poor, with access to small plots of over utilized and degraded land, cannot feed themselves, yet most of the best agricultural land is used for the production of export crops, with little of the produce finding its way into the local market and even less to local communities who largely have to depend on nature.

The position held by ECA about Africa is true in Nigeria as well. The aristocrats use the instrumentalities of the law to amass wealth for themselves. In Nigeria, the leaders of the country take advantage of the lapses on the Land Use Act to deprive the poor of their inheritance. This is the more reason wonder almost all past leaders of the country since the Act was promulgated in 1978 have one farm or the other, producing different food items. The poor in the country with limited access to land, with even the rural land being elusive and diminutive, are exposed to poverty and hunger. The FAO world summit in November 1996 concluded that about 840 million people (15% of population) are undernourished and that under current prospects this would only reduce to 680 million by 2010 (10% of the world population). This would be 18% of the population in the most vulnerable countries where 3 million people would live in 2010. This position held by FAO reflects also the dangers in the Nigerian situation.

CONCLUSION AND RECOMMENDATIONS

Land right characteristics affect access to land and access to land on the other hand affects food security in Nigeria. It is gratifying to note that government is doing something to the effect of righting the wrongs of the country's land tenure laws. It is the candid desire of this paper to trigger off the zeal and interest, not only to expedite work on the review process of the land use act, but for those entrusted/saddled with the responsibility of reviewing the act and implementation thereafter, to consciously employ their wits and patriotism in doing so.

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