

Women and Land Rights Reforms in Nigeria

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SUMMARY

Land rights are usually conceived of as the rights to use, enjoy and exploit land including information about, decision – making around and benefits from the latter. Women’s land rights are fragile and transient, being dependent upon age and marital status (including type of marriage and the success of that marriage), whether they had children (including the number and sex of those children) and their sexual conduct. And, inspite of the Nigerian Land Use Act (LUA) of 1978, which restructured the property rights system in the country from a mixed private property rights system into a collectivist framework, concerns about women’s land rights persist. Thus, the impact of inequality in land rights has aggravated women’s socio – economic status, increased the number of women engaging in sex work, allowed for sexual harassment and violence against women and contributed towards marital instability, separation and divorce.

But, landholding systems are now considered to be spontaneously evolving with greater market integration, even without state – sponsored protection of private land rights. As such, with the government readiness to review the LUA, the paper, through case studies and a survey of relevant literature, demonstrates that gender is central to understanding organization and transformation of landholding in Nigeria, shaping women’s differential experience of tenure insecurity, not only as wives, but also as sisters and daughters and as divorced or widowed head of households. It is also, *prima facie*, argued that in the context of globalization occasioning greater market integration, women could contest claims made on their land, but, their ability to negotiate access to land needs to be supported and harnessed into land policies.

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1. INTRODUCTION

In most developing countries, land is not only the primary means for generating a livelihood but often the main vehicle for investing, accumulating wealth, and transferring it between generations. Thus, the ways in which access to land is regulated, property rights are defined, and ownership conflicts are resolved has broad implications beyond the sphere of agricultural production (Deininger and Binswanger, 1999)

Within the sphere of creating access to land, certain privileges, opportunities and claims are conferred on the individual user of land. But, the complexity of land tenure in Nigeria is the result of the co-existence of several systems (whether customary – sometimes with Islamic influence – or state), none of which is completely dominant. This legal pluralism causes a degree of uncertainty about land rights, particularly for vulnerable groups (women, pastoralists, migrants etc) and leads to conflicts for which the many different arbitration bodies (customary, administrative and judicial) are unable to find lasting solutions (Delville, 2000; Abdullah and Hamza, 2003, Cotula, *et al*, 2004; Aluko, 2005)

Under the customary land tenure system, which is still very much prevalent, the distribution of rights is based on socio-political system (the political history of the village and region from which the alliances and hierarchical relationships between lineages are derived) and on family relationships (access to land and resources depending on one's social status within the family), so that social networks govern access rights (Berry, 1993; Umezulike, 2004). It is, also, worth noting that in most of these customary landholding systems, community level decisions about land are taken by chiefs or headmen on behalf of and in trust for the clan or family. Chiefly authority is generally ascribed to a patriarchal lineage, and most major decisions are taken by men (Ntsebeza, 1999). Nonetheless, women have ways of bringing their views to the attention of such authorities, although, they usually do not participate in decision-making. Again, women claims to land within customary systems are generally obtained through their husbands or male kinsfolk and, hence, may be considered 'secondary' rights (Hilhorst, 2000; Tripp, 2003; Whitehead and Tsikata, 2003).

In Nigeria, the intervention of the state through the promulgation of the Land Use Act, (LUA) 1978 has not helped much. The Act vested the ownership of land rights in the state to ensure equal access to land. And, because the indigenous system does not admit that land can ever be without an owner, there persists confusion, either in theory or practice, on where lies the allodial or paramount title to land (Elias, 1960; Meek, 1949; Amankwah, 1989; Aluko, *op cit*). This has, in no small measure, affected the implementation of the Land Use Act in the country. Thus, Fabiyi (1990) criticized the Act as an urban legislation which only superficially touches the tenure problems in the rural areas in the country. This attests to the prevalence of customary landholding systems as against state/statutory system in the country.

Against the above, the continued characterization of women's rights as 'secondary' to men's has led some to argue that women should receive their own land titles (e.g. Gopal and Salim, 1998; World Bank, 2000; Yngstrom, 2002). Not surprisingly, disputes over land are among the bitter forms of conflict in Nigeria. And, although various aspects of the land question in the country have been studied, only recently has there emerged increasing activist and intellectual concern with the gender dimensions of land, with particular reference to women's right to independent access to, and control over, this critical resource (Davison, 1988; Safere, 1995; Meer, 1997; Abdullah and Hamza, *op cit*)

This debate has frequently turned on the claim that women's subordination in landholding results from their being insufficiently modernized, discriminated against by 'the customary law of inheritance, whose rules favour men' (Gopal and Salim, *op cit*). Moving beyond the limited analyses and assumptions of women's rights being determined by men, Leonard and Toulmin (2000) argue that in the context of greater market integration, women have contested claims made on their land, and it is their ability to negotiate access to land that needs to be supported and harnessed into land policies. Based on the foregoing arguments, the paper examines below the sources of women land rights vis-à-vis the problems of the LUA in improving the access of women to land in the country. Consequently, the paper makes proposals for land reform to guarantee easy access of women to land in the country.

2. LAND ADMINISTRATION AND TENURE

Land administration and tenure in contemporary Nigeria is based on three sources of law – native law and custom, received English law and statutory law (Yakubu, 1985; Aluko *op cit*)

2.1 Native Law and Custom

The native law and custom embodies both customary and Islamic laws. Before the advent of the British government in 1861, Nigerians operated customary land tenure system, which was indigenous to the people. The applicable customary law is the one prevailing in the area where the land is situated. There is no uniform system of customary law operating throughout Nigeria. There are as many systems of customary law as there are ethnic groups and within an ethnic area there may be variations, not in essence but in detail, in respect of the particular localities of the area. Nevertheless, a careful examination of the various systems reveals some common characteristics (Olawoye, 1974). The units of landholding are the community or village, family and stool. The principles of land ownership are built on the assumption that the entire family has proprietary rights in the land ... the individual grantee is held to possess usufruct rights over land granted him. It should, however, be added that individuals may acquire absolute rights in land through gift among living persons (*inter vivos*), pioneer clearing of virgin forests or through partition of family landed property. Rights acquired in any of these ways become proprietary rights the owner being free to dispose of such rights without consultations with anyone (Famoriyo, 1987).

Women have long had access to land in sub-Saharan Africa, but men and women have already, if ever, had identical kinds of claims to land, largely because the genders have varying differentiated positions within the kinship systems that are the primary organizing order for land access (Moore and Vaughan, 1994; Rocheleau and Edmunds, 1997). It is striking that there is no recognized formal category for the particular character of women's land access. Marriage is used as a determining variable in women's land rights because it is the major means by which women and men access land in Nigeria. However, whereas women's land rights are dependent on their relations with men, men's land rights are not dependent on their relations with women. Moreover, women are threatened with dispossession if divorced or widowed (Small, 1997). But, a divorced Muslim woman in the northern part of the country is entitled to take all her personal property, including land and landed property (Uzodeke, 1993). Women often also retain some residual land claims in their own kin groups as well as frequently obtaining land by loan or gift from a wider circle of social ties. There are variations from one ethnic group to another. For example, among the Edos (Benin people), the land tenure in practice is 'primogeniture' that is, land passes to the first son on the death of a landowner. Also, in some chiefdoms among the Ekitis, Ijeshas and Ondos in the south-western part of the country, a regent, usually the first daughter of the immediate deceased king or chief is appointed during a period of interregnum. This position confers authority on all matters including land management, whether family, stool or community lands (Adegboye, 1993; Aluko, 2001).

In Northern Nigeria, land tenure was based on three factors: Sharia, local custom and politics and the discretionary power of the ruler (Meek, 1957). In Sharia, land is considered as indispensable to individual and social life just like water, air, light and fire and no person will have an exclusive power of control over it except for the part he uses (Yakubu, 1985). Land is a gift from Allah (God) and everybody has usufructary rights to it (Yakubu, 1988). Furthermore, land ownership is not limited by time. Land in Sharia is administered legally under three categories. The first, occupied land refers to land that is under use. The second category, unoccupied land, is divided into two-town land and land outside town. The third and final category is what is referred to as common land. Historically, this included land acquired through warfare (Abdullah and Hamza, *op cit*).

2.2 Received English Law

One of the impacts of colonization is that it imported into the country the English common law, the doctrines of equity and the statutes of general application in relation to land law that were in force in England on the 1st day of January, 1900. Some of these statutes are: the Real Property Act, 1845, Statute of frauds, 1877, the Wills Act, 1837, the Limitations Act, 1833 and 1874, the Partition Act, 1868, the Conveyancing Act, 1881, the settled Land Act 1882 and the Land Transfer Act, 1887. Accordingly, the English common law rules relating to tenures, disposition of real property, estates, inheritance, perpetuities and a number of others became applicable in Nigeria. The same could be said of the doctrine of equity, which included the construction of Wills, institution and settlement of land, legal and equitable estates and interests in land and the doctrines of notice. In a nutshell, colonization brought about the substitution of ownership of land with such concepts as rights, interest, possession and

occupation. The largest possible interest in land received into Nigerian land law is the fee simple absolute in possession, which theoretically in England does not amount to absolute ownership.

2.3 Statutory Law

In Northern Nigeria, the colonial administration through various enactments such as Native Rights Ordinance, 1916 placed all lands under the control and subject to the disposition of the governor. This was on the basis that the Malili Law operated by the Fulani over much of the Hausa land in the 19th century conferred on conquerors rights to the land of the conquered. Without the consent of the Governor, no title to occupation and use was valid. An Ordinance directed that the Governor should hold and administer the land for the use and common benefit of the native people. Any native or native community lawfully using and occupying land in accordance native law and custom enjoys a right of occupancy protected by the ordinance and no rent is paid in respect of such rights. In the case of all other persons, no title is valid which has not been conferred by the Governor, who is empowered to grant right of occupancy for definite or indefinite terms, to impose conditions and to charge rents. The ordinance provides for a minimum of 1,200 acres for agricultural grants and 12,500 acres for grazing purposes (Mabogunje, 2002). After Nigeria's independence in 1960, the Government of Northern Nigeria in 1962 enacted a new land law called the Land Tenure Law, 1962. The law improved and modified the Native Rights Ordinance before it was later repealed by the Land Use Act, 1978.

Also, in the colony of Lagos and Southern Protectorates, the system recognized that land was owned by lineages or extended families. Individuals have only right of use on such family land. The only land held at the Governor's disposal was that which had been expressly acquired for public purposes as Crown land. The only control imposed by law on the lineages and other local landholders was an obligation to seek the consent of government when rights are being conveyed to aliens (Elias, *op cit*, Amankwah, *op cit*)

The foregoing dual nature of landholding system were, however, characterized by a number of problems. Such problems include incessant rancour and litigation on land matters due to fraudulent sales, inaccessibility of land to government and private individuals for developmental projects, land speculation leading to exorbitant land prices in our cities, fragmentation of lands into uneconomic size holdings and insecurity of title to land. In view of the above, a land use panel was set up in 1977 by the federal military government; and this led to the promulgation of the land use Act 1978. The LUA is the current land law and is applicable throughout the country. The main objectives of the legislation are to unify land tenure systems in the country and at the same time make land easily accessible to the government and individuals (men or women) without let or hindrance. With this, gender equality in land matters was ushered into the country. The operational modalities and the workability including attendant problems of the Act were examined below.

3. THE LAND USE ACT, 1978

The then Federal Military Government of Nigeria promulgated the LUA on the 29th of March, 1978. The act purports to take over the ownership and control of land in the country thereby providing a uniform legal basis for a comprehensive national land tenure system. It was enacted to deal with problem of uncontrolled speculations in urban lands, make land easily access to every Nigerian irrespective of gender, unify tenure system in the country ensure equity and justice in land allocation and distribution and, amongst others, prevent fragmentation of rural lands arising from the application of the traditional principle of inheritance. The Land Use Act, 1978 approaches these issues through three strategies: the investment of proprietary rights in land in the state; the granting of user rights in land to individuals; and the use of an administrative system rather than the market system in the allocation of right, in land (Uchendu, 1980; Fabiyi, *op cit*; Omirin, 2002)

Section 1 of the Act vests ownership in all land within the territory of each state in the federation in the state governor 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. The Act provides for the grant of “fresh’ and “deemed” statutory right of occupancy in urban lands by the state government under section 5 and 34 respectively. Similarly, customary right of occupancy which is to be granted by the local government in respect of rural lands could be granted under sections 6 and 36 of the Act. The Act has no separate definition for a “right of occupancy” but only “customary right of occupancy” and “statutory right of occupancy”. A “customary right of occupancy” is defined by the 1978 Act to mean: “the right of a person or community lawfully using and occupying land in accordance with customary law and includes a customary right of occupancy granted by a local government under the Act,” whilst, a “statutory right of occupancy” is defined simply as a right of occupancy granted by the governor under the Act.”

This new authority is exercised by the special land use boards known as Land Use and Allocation Committee (LUAC) at the state level and Land Advisory Committees (LAAC) at the local government level. No provision for reconsideration or appeal against the decision of the committees was allowed as a challenge to the legitimacy of the Act, and a new regulatory machinery was set up (Iwarere, 1994).

Other important provisions of the LUA, 1978 as follows (see, for example, Omotola, 1982, Fabiyi, *op cit*; Mabogunje, 1992: 2002; Umezulike, *op cit*);

- (i) every land that has already been developed remain in the possession of the person in whom it was vested before the Act became effective;
- (ii) the governor is invested with the power to grant statutory certificate of occupancy (C of O) which would be for a definite period, usually 99years, to any rights of access under his control;
- (iii) the maximum area of undeveloped land that any person could hold in any one urban area in the state is one half of an hectare, and 500 hectares and 5000hectares for agricultural and grazing purposes respectively in the rural areas, except with the permission of the governor;

- (iv) the consent of the governor or local government is required for transfer of statutory right of occupancy as the case may be; and,
- (v) compensation, where entitled to it under the Act, could be paid to the individuals concerned, the community or to the chief or leader of the community to be disposed of by him, for the benefit of the community in accordance with the applicable customary law.

The general review has been that, as the Act purports to nationalize all lands in the country, it will promote free access of women and men to land, ensure fairer distribution of wealth in the society, improve security of tenure, accelerate pursuit of efficiency in land administration and control, regulate a land prices and, vests socially-created gains or land values in government through the institution of land taxation in the country. (Denman, 1978; Olawoye, *op cit*; Olukoshi, 2004). But, much as the Act would have ensured equality of men and women in land allocation and management in the country, it is an open secret that land still continues to changes lands, outside government regulatory mechanism, in accordance to native law and customs of the people. This has, therefore, hindered the much desired hope of promoting equality of access to land to men and women under the Act since the customary land tenure system discriminates, in land matters, against women. Perhaps, a number of the following plausible reasons accounted for this situation! (Omotola, 1980; 1982; Fabiyi, *op cit*; Udo, 1999; Umezulike, *op cit*)

(a) In spite of the revolutionary nature of the Act and its vesting ownership of land in the state, it has become exceedingly difficult to locate the place of radical (paramount) title to land in the country. For instance, in some provisions of the Act references to communal and family forms of tenure were made in a manner which suggests that it assumes the existence of such institutions and intends them to continue. For example, while section 29 dealing with compensation upon revocation of right of occupancy provides that such be paid to the community or chief or leader of the community to be disposed of by him in accordance with the applicable customary law, section 48 of the same Act upheld the subsistence of the former existing interests in land before the Act was enacted. In addition, customary right of occupancy under the Act is to be administered in accordance to the native law and customs suggesting that the customary overlords can still continue to wield the power of control and management of land resources excluding numerals, in the rural areas in the country.

A very strong or weighty authority to support the subsistence of the customary system of land ownership simultaneously with the operation of the LUA, 1978 is the case of Madam Safuratu Salami and Ors v Sunmonu Eniola Oke (1987) 4NWLR part 63 page 1 at 12-15. In that case where the customary tenants refused to pay 'Ishakole' (land rent) and denied their overlord's title, it was held by the supreme court;

- (i) that it is a misstatement of law to say that the Land Use Act abolished remedies of forfeiture and injunctions available to the overlord;
- (ii) that the Land Use Act did not intend to transfer the possession of land from owner to tenant;
- (iii) that there is nothing in the provisions of section 36 (2) preventing a holder (customary overlord) of customary right of occupancy from granting customary tenancy and

forfeiting the customary tenancy provided the provisions of the Land Use Act are strictly complied with; and,

- (iv) that the defendants/appellants having by their actions forfeited their rights to possession in addition to their refusal to pay 'Ishakole' (land rent) were not lawfully occupying the land in dispute under customary law. They cannot therefore invoke section 36(2) of the Land Use Act to continue their possession of the land.

(b) The phraseology of the section 1 which purport to vest ownership of land in the state does not make it clear enough (i) the category of the interest vested in the governor; (ii) the capacity in which he holds is also rendered uncertain because of the expression "shall be held on trust" since "holding in trust" as known to the law of this country implies a well-defined set of functions and powers into which the stated duties and powers of the state governor, under the Act, do not conveniently fall. Thus, the anxiety among writers to discover a trust under the Act where none exists is not unconnected with the desire to press the view (despite abundance of evidence to the contrary) that the citizens retain beneficial and paramount interest in land as cestuis-que-trust notwithstanding the language of the Act. But, it is often ignored that the interest of the cestuis-que-trust is an estate in land but the citizens interest under the Act is a right of occupancy which is less than an estate (Omotola, 1980) in land and may infact be likened to a license (Umezulike, op cit). Besides, under section 1 of the Act a trust appears to have been created in favour of "all Nigerians" But under section 5(1), the Governor is empowered to grant a statutory right of occupancy to any person for all purposes. A similar power is given to the local government under section 6. It is therefore clear that any person would include non-Nigerians who by the provisions of section 1 are not an object of the trust. So the beneficiaries of the "trust" created under the Act are not certain. There cannot therefore exist a valid trust where the beneficiaries are not certain.

Moreover, since the indigenou system does not admit that land can ever be without an owner (Elias, op cit) and, since there has been no monumentation, parellation and documentation of all the land in each of the states in the federation, consequent upon the enactment of the Act, the quantum of land vested in the Governor – the subject – matter of the trust – under the Act is uncertain and even at times unknown. Again, under the law of trust, no trustee would be vested with such power of revocation under section 28 of the Act for overriding public interests being wielded by the state governors in the country.

(c) The purported nationalization of land in the country through the Act has been subject of criticisms in the pursuit of efficiency and gender equality in land administration and tenure system in the country. Implicit in the notion of the public ownership of land is a fundamental paradox and a fundamental impracticality. The paradox is that the people's title must in some measure give way to private ownership of rights if society is to be ordered aright in any civilized way; an ordered, law abiding society cannot be a society of trespassers. Private rights must exist in the interests of social stability and order. The impracticality arises from the fact that an amorphous mass of men, or even two persons for that matter, cannot so fuse the individual identity of each person or each member of the group or community, so as to fashion a unitary consciousness, competent and capable to take decision required to give expression to the use of property rights (Denman, 1978; Smith, 2003). This is the problem

which stretched the minds of medieval jurists struggling to bring to birth the notion of the body corporate; this indeed is the paradox of democracy. At last, the management of land in each state usually reflects the aspirations and personal goals of the governor. No wonder then that the Act has empowered the governors past or current who use it to dispossess their political opponents and or peasant farmers through large-scale acquisition of land for commercial agriculture, paying only for unexhausted improvement stipulated by the Act (Fabiya, *op cit*, Smith, *op cit*) And, in a country such as Nigeria, where less than 10 percent of women occupies positions of political authority, the administration of land is bound to be tilted against them. Thus, the LUA's objective of bringing all land under government control for equitable distribution is unattainable. The legislation has merely created a dual structure that will, if not dismantled soon, crystallize into much inefficiency in land use and allocation.

(d) Where compensation is compelled to be the head or leader of the family or community as enshrined in the Act, to be disposed of in accordance with customary law and customs, the women's rights in land is weakened as they have limited participation in customary land management institutions. In most Nigeria societies, chiefly authority is generally ascribed to patriarchal lineage, and most major decisions are taken by them. This is also true of the administration of the customary right of occupancy under the Act defined as being administered according to nature law and customs of the people. Thus, while women have ways of bringing their views to the attention of customary land management institutions, they usually do not participate in decision-making. As a result, community decisions are made without explicit reference to women's knowledge or priorities. Again, the customary system of inheritance which, in most cases, discriminate against women – wives or daughters-inheritance may still subsists as the case may be; although, in the country the Court of Appeal invalidated customary norms providing inheritance by male family members only (Mojekwu v Mojekwu, (1997) 7NWLR 28) and conditioning inheritance by daughters to their undertaking to remain unmarried (Mojekwu v Ejikeme (2000) 5NWLR 402).

4. CONCLUSION

The paper examined how the customary land tenure system and the Land Use Act, 1978 have touched on women's land rights in the country. Much as the Act which purports to nationalize land, would have promoted efficiency and genders equality in land management, highly centralized systems of governance, combined with bureaucratic top-down decision making systems tend to impose decisions on people at the grassroots. Also, the inability to locate where the allodial title resides, whether in the government or the customary landowners, in view of the conflicting provisions in the Act make it practically impossible to implement the latter especially in the rural areas, in the country. This has also paved way for the subsistence of customary system of land holding, with the attendant consequences on women land rights, in the country. African culture and traditions are the glue that holds people together and allow communities to function.

Against the foregoing, any attempt to eliminate the traditional authority's input into land management, either through land nationalization or the centralization of land administration under the Act or by the facilitating the growth of land markets, is to invite the growth of a

parallel unofficial land management or land market system, thus creating confusion in land management. The cultural laws and practices of family rather than individual rights, are the basis of Africa's celebrated social security system; a system that is still relatively cost-effective and unlikely to be replaced by state social security system for quite some time into the future. What is needed, therefore, is not land nationalization but change in practices that have been identified under customary land tenure system as reducing women's land rights as well as introducing insecurity of tenure. Change must be consciously managed in order to bring about greater gender justice in resources allocation for women. For instance, in countries such as Uganda and Tanzania, this has resulted in cultural advocacy to ensure that the reforms in land tenure address some of the concerns expressed by women. Highly effective lobbying and alliance building strategies by Ugandan women groups and lawyers resulted in a spousal co-ownership clause being included in the draft land legislation, although, despite assurances that this clause would be passed, the final late-night parliamentary sittings passed the new land law without it. But, this should not deter the community based organizations and non-governmental organizations in pursuing the course of gender justice in land management in the country.

Furthermore, if Nigeria is to achieve meaningful levels of economic development and social progress including gender equality in accessibility to land, then, issues of agriculture and national resource management can no longer be divorced from issues of politics, democracy and good governance. We have to define and redefine democracy so that it means much more than the rhetoric of multi-party politics so that democracy related to accountability and responsibility of the urban and rural communities where the majority of Africans live. This can only be achieved through liberalization or privatization of land management that will guarantee equal access to land for all citizens – women and men alike. Not all women's advocates share this view of liberalization. Some of the most influential groups supported the liberalization of land markets, land titling and registration, on the grounds that it creates opportunities for women to purchase land on their own account and have it registered in their own name, to be inherited by their descendants. This will promote women independent land rights. Independent rights would be preferable to joint titles with husbands, which could make it difficult for women to gain control over their share in case of marital break-up. Besides, it may affect how inheritance and land use priorities are handled.

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