

# THE NIGERIA'S LAND TENURE POLICY AND POVERTY AMONG PEASANT FARMERS: A CASE OF HUMAN RIGHTS VIOLATION?

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## ABSTRACT

*Under customary law, elders and family heads are the dominant landowners, through whom members of the community obtain access to resources via ownership, sharecropping, tenancy and pledging. Nigeria, like any other African nation, inherited tenure laws from colonial government and at independence state ownership became the norm, and land was then either sold or leased privately. Thus, customary land tenure practices which bestowed land rights on peasant farmers were weakened, and politics became the basis of land distribution and acquisition. This legal provision over land is a violation of individual and group rights, as rights to land represents a whole bundle of other rights, such as the right to employment, right to income and fruits from the land, right to transfer the land to other exchange for other assets (loan), right to communal citizenship and right to political power. This threatens over 90 percent peasant farmers to whom land is not only a means of livelihood, but also a sort of identity and ancestral relationship. This study, therefore, intend to establish whether there is any significant link between land access, tenure security and cyclical poverty among peasant farmers in Nigeria.*

## INTRODUCTION

The conventional notion of poverty, hinges the cause of poverty on unemployment, lack of education, lack of income and assets, lack of basic necessities (CBN/World Bank 1999, World Bank 2001). Very few studies, especially in developing nation like Nigeria, have tried to demonstrate the

The study is partitioned into three parts: part one constitutes the introduction and the historical overview of tenure systems in Nigeria; while part two discusses the problems, the concepts and the theoretical framework of the study, and the final part looks on the impact of LUA on the peasant farmers and concludes the study.

### **NIGERIA LAND POLICIES: HISTORICAL OVERVIEW**

Land tenure in Nigeria is basically customary; each ethnic grouping has a unique system. Two major principal of land tenure system exists in the country. In the Northern Nigeria the tenure system is governed by the *Land Tenure Law 1962*, while in the Southern Nigeria, land administration is under Customary Law.

**Customary Tenureship:** This is a traditional method, under which land is considered community property. It confers on the owner the right to use the land so held by him for agriculture, building or any other purpose, as long as he occupies the land and remains of good behaviour to the community or group from whom his holding derives. There is right of inheritance to children of a landholder, classes of ownership are communal land, clan land, village land, family land or deity land. The community or family heads administer the land in consultation with respective elders of the group. Individual has right of sale, but not to a 'stranger' or a person not from the holding-group or family, and he must consult the family heads before the sale. With passage of time this has changed, customary modes of land transfer through gifts, exchanges, loans, renting, pledges or possessory mortgages evolved and intensified. Land sales, which were sanctioned only among members of the group, later to outsiders with approval of the group or its head, and later in some cases without such consent, have evolved. This is in response to the objective conditions of societies.

**Land Tenure Law 1962:** Before the enactment 'land tenure law 1962', lands were held under customary tenure, in various areas of the Northern states. The Fulani conquest of much of northern Nigeria in the early 1800s brought a change in land tenure in areas under Fulani control. It made the traditional customary tenure subject to *Islamic land rules*. Islamic religion then was for the ruling and trading class, while the majority of the peasantry remained pagan (Land Use Panel 1977:9). The effect of the conquest was usurpation of right of ownership / use from the peasant by the Islamic feudal lords. Peasants were made to pay Kharaj as rent before they are permitted to make use of the land.

In the early 1900s, the British established hegemony over the Fulani rule and declared all land in the former Fulani fiefs to be public property.

by the occupier without due approval, requirement of the land by Federal, State or Local Government for public purposes. In such cases, compensation may be paid but only for 'unexhausted improvements' on land and not for the land itself since with the Act, land no longer has an economic value

- ❖ a breach of any of the provisions of the Act or a refusal or neglect to accept and pay for a certificate issued as evidence of a right of occupancy could lead to one's land being expropriated (Land Use Act 1978: section 28, sub sections 1, 2 (a) and (b), 3 (d) and 5 (a, b and c).

It is important to note that the land use panel submitted two reports, main and minority – to the federal Government in early 1978. In the main report of the panel, it advised in unequivocal terms against either the nationalization of land or the extension of the land tenure system of the northern states to the whole country. But the minority report while characterizing the authors of the main report as 'protectors of vested interest infiltrating against the rational socio – economic use of land.' Advocated its nationalization, slating that 'the idea of Government being the custodian of land (as) in the northern states is germane and should remain acceptable base for land use (France 1984:7). The Federal Military Government concurred with the authors of the minority Report and accordingly promulgated a decree on land use, and called it, The Land Use Decree No.6 of 1978. It is important to note that the provisions of the Land Use Act of 1978 have been enshrined in the constitution of the Federal Republic of Nigeria. This implies that the provisions of the Act cannot be amended or expunged, altered or repealed except as provided by the stringent conditions stated in the constitution for the alteration of its provisions.

## **CONCEPTS AND CONCEPTUAL FRAMEWORK**

**The Problem:** In Africa land is of important value, both in occupational and spiritual dimensions (Famoriyo, 1973). The attachment to land determines a people's sense of identity, and serves as the primary basis for the construction of their history. Land and space is much about ownership, control and distribution of resources therein. The Latin maxim, *quid quid plantato solo so credit*, that is, he who owns land owns what is on, under and above it, speak much about the value placed on land in Nigeria (Omenma, 2000:5).

The Land Use Act of 1978, nationalized all lands in Nigeria, and eroded the sovereign right of the people and the community. The general principle of the Act state that: "subject to the provisions of this decree all land comprised in the territory of each state in the federation are hereby vested in the (Military) Governors of the State and such land shall be held in

commerce and trade, but they cannot support large-scale industrial capital (Bates, 1996), unless a formal institution is in place. To prosper, economies dominated by traditional institutions must rapidly 'reform' to adopt or adapt to the modern, legal-formal institutions.

In the traditional society, the key institutions of the household, the village and the kin group help to lower the costs of moral hazard and adverse selection (Collier and Gunning, 1996). Membership of the group provided insurance against risks, access to informal credit, and security. The kin group, traditional system and extended family system provided a full package of social support system to management of productive resources. Lineage rules of inheritance helped to enforce inter-generational transfers. The indigenous land rights had features of *heritability*, *security* and *transferability*. Individual's rights are conditioned by group rights or secondary rights, and no restriction to use of land for agricultural purposes (Plateau, 1996, and Demsetz, 1967). This evolutionary model fairly characterizes the actual experience of African societies in the last century (Kirk, 2000; Migot-Adholla, *et al* 1991).

The evolutionary property right school argues that the indigenous land system failed to cope with increased population pressure, technological changes and agricultural commercialization, "communal ownership becomes unstable and produces harmful effects in the form of mismanagement and / or over-exploitation of the valuable resource. In such a circumstance, the 'old' indigenous institution should give way to a clear assignment of property rights, which according to Coase (1960) leads to Pareto-optimal outcomes." The notion is that the indigenous tenure does not confer scarce property rights, and thus is inappropriate to spur large-scale irreversible investments in agriculture.

Following this dominant intellectual climate, the African policy makers were convinced that tenure reforms were long overdue. As Bruce, Freudenberger and Ngaido (1995) observe, "in the post-independence decades, almost every African country attempted to reform its indigenous land tenure system... the new elite who came to power... believed that these community-based tenure systems were outmoded and had to be replaced", Replacement of the existing (outmoded) indigenous tenure system was the key objective, and individual titling or registration was the 'new institution' - considered most effective means of ensuring secured property rights on land and hence increased investment in agriculture.

This position guided or informed the enactment of the Land Use Act of 1978 to address four important issues arising from the former land tenure systems in Nigeria: the problem of lack of uniformity in the laws governing land-use and ownership; the issue of controlled speculation in urban land; the question of access to land rights by Nigerians on equal legal basis, and the issue of fragmentation of rural lands arising from either the application of

rights violations and most importantly, no distinction was made between civil, political and economic, social and cultural rights.

Thomas Scanlon asserts that human rights are minimal standards that may be expected of any government, regardless of ideology (Johansen, 1983). Regardless of dispute over the content or origin of any right, if it is considered a human right, it is universal. This principle of universality is shaped by four factors:

- Human rights extend to every person on earth,
- All persons, regardless of status or position, are entitled to share rights equally,
- Claims to respect rights may be made against all institutions and any other human who impede implementation,
- Human rights are standard for judging the legitimacy of laws and traditions.

These four factors or dimensions are in tandem with the new vision for human rights by UN, one that recognized the indivisibility, and interdependence of all human rights.

In literature, wide consensus are reached on the existence of human rights – natural, divine or man-made- the central issue before scholars and officials is how to make respect for human rights as wide-spread and compelling as belief in them. Thompson (1980) and Meyer (1981) asserts that disrespect for human rights is due to “tension between human rights and national sovereignty”, and a consensus to honour human rights was an agreement to undermine government autonomy. That is, human rights limit state power, and elites who are custodian of state power are preoccupied with the maintenance of their power, ignoring the necessity, and the obligation to meet basic needs. They are tempted to become more authoritarian and oppressive in the face of rising demands for human rights. Departing from their appropriate roles as providers and protectors of human rights, nation-states themselves become the most important deprivors.

It is in the light of the above assertion that the General Assembly of UN resolution 47/134 of 18 December 1992 reaffirmed that the extreme poverty and exclusion from society constitute a violation of human dignity, and government is responsible for the violation. This is against the grains of international and domestic conventions of human rights. Economic, social and cultural rights (ESCR) impose three obligations on state: the obligations to respect, protect, and fulfill; failure to perform any of these three obligations constitute a violation of such rights. The obligation to respect requires states to refrain from interfering with the enjoyment of economic, social and cultural rights. The obligation to fulfill requires states to take appropriate legislative, administrative, judicial and other measures towards the full realization of such rights (Onyekpere, 2001).

A major legislation violating property rights in Nigeria is the land use Act of 1978, inserted into the 1979 constitution (S. 274 (5) (d)) (S. 315 (5) (d)) which abolished private ownership of land and instituted a system of "rights of occupancy" and vested title to land in states of the federation in respective Governors of those states. Section 28 (1) of the Act empowered the Governors of each state to revoke a right of occupancy over any land situated within this state, where considerations of "overriding public interest" demand such revocation. Section 29 of the Act provides for compensation in such cases, but the quantum of compensation is restricted to the value of unexhausted improvements on the land (CRP, 1999).

The land use Act, has violated the rights of land users and owner in five fundamental ways:

- (a) The right of indigenous people to land, as provided in section 43 of 1999 constitution of Nigeria, that "every citizens of Nigeria has the right to acquire and own immovable property anywhere in Nigeria" as fundamental right. This right is also provided in Africa charter on Human and peoples' rights (ACHPR), the right to property (Art. 14).
- (b) The legal status of the Nigeria land user becomes that of statutory occupancy, not one of ownership, and the economic interest and benefits of statutory rights of occupancy are severely limited by law since property interests in land are lost and claims are restricted to improvements made on the land.
- (c) Actual users do not enjoy full legal recognition. Even in cases in which private property rights are recognized, the rights of certain groups of land users – such as women and holders of customary rights are not recognized. This has major implications for equity, the sustainability of resource use and productivity, especially when the excluded groups are important land users – women, who are the main cultivators in African agriculture (Boserup, 1985).
- (d) Equally important, land can no longer be used as collateral by poor farmers to obtain micro-credit and loans from formal and informal financial institutions.

What is the scope of this deprivation? Is there any correlation between human right violation and poverty level?

**Concept of Poverty:** Over the years the issue of poverty has assumed a global status both in dimension and efforts to reduce it. The World Development Report (1990) estimated that more than one billion people in the developing world were living in absolute poverty. This estimate was arrived at using US \$ 370 per year or a dollar per day as the poverty line. However, the incidence of poverty is found to be greater in the sub-Saharan Africa than anywhere else in the world (World Bank 1996). This has become

a major concern of academics, policy makers and the international developments partners, including the United Nations Development Programme (UNDP), and the World Bank since 1995.

Review of literatures on poverty show that a consensus concept of poverty is elusive, due to its multi dimensional nature, as well as its dynamic properties. Most economists define poverty as a situation of low income or low consumption, using both income and non income as measurement of poverty (Obadan, 1997; Dollar and Kraay, 2000), some of them adopt a broader definition such as being unable to meet basic material needs including food, water, clothing, shelter, education, health as well as basic non material needs including participation, identity, dignity etc (Streeten, 1979; Blackwood and Lynch, 1994). The pioneers on "income" and "non income" definition of poverty zero it on a condition where they family incomes are insufficient to obtain the minimum necessities for the maintenance of physical efficiency (Rowntree, 1922).

This definition forms the background of the needs approach to the study of poverty which gave rise to emergence of the concept of absolute poverty. The latter, absolute poverty is a situation where the income of a person or a household is inadequate to secure the minimum basic human needs required for physiological survival (Scott, 1991). These basic needs are water, food, clothing and shelter, which is also Maslow's lowest level of hierarchy of needs. These needs must be satisfied in order to survive, as failure to secure these basic needs will result to impaired physical efficiency and eventual death.

The notion of absolute poverty remains relevant especially in areas prone to famine, war and other natural and man-made disasters. But it is quite limiting because it cannot form the basis for interpersonal, inter-temporal, international and even spatial comparison. Also, the influences of socio-cultural and environmental factors are ignored even though humans are known to have incredible capacity to adapt and survive extreme conditions (Ajakuiye, 1998).

Relative poverty was developed to address some of the weakness of absolute poverty. Townsend (1973) defined relative poverty as a situation where individuals or families are in command of resources which, over time, fall seriously short of the resources commanded by the average persons or families in the community in which they live. To add to this idea, (Aboyade, 1937), argue that when people's income, even if a adequate for survival, fall radically behind that of the community average, they cannot have what the larger community regard as the minimum necessary for decency, and they cannot wholly escape the judgement of the larger community, that they were indecent. They are degraded, for in the literal sense, they live outside the grades or categories which the communities regard as acceptable.

process of the production, distribution, exchange and consumption of the material benefits (Volkov, 1985:275). Studying development as a dynamic process of holistic change, it entails locating the issues of production and distribution of wealth in a broad historical context, embracing social, economic and political variables. How those who are entrusted with political power try to re-enforce themselves by hijacking the local economy. In this study, however, we shall highlight specially the hegemony of politics among the variables that shape the dynamics of change of policies in general, and the Land Use Act.

The central thesis of this study is that what manifests as economic crisis is primarily, a political crisis. Political repression is at the root of contemporary Nigeria peasant's cyclical poverty and penury. This can be attested to in many ways.

First, it is assumed that, in a developing economy like Nigeria, an appreciation of the politics is crucial for understanding and promoting human development, because intentions and actions of political class filter through complex layers of self-interest, and policies that emerge therefrom cease to be that of human development, but strategies of survival, power or accumulation (Ake, 1999:64).

It is of utmost importance to explore how politics in Nigeria, legal and institutional framework, develops or under-develops the economy, and enriches some while impoverishing others people.

The second assumption is that, in Nigeria, like in many developing countries, the pervasiveness of extreme poverty implies that socio-economic inequalities and human rights abuse are very great. Consequently, the peasants' access to land and security threatens some interest more directly and significantly than others. It is, therefore resisted by those who perceive their interests as being threatened by new ways of using and distributing resources. It is, thus, important to analyze the society in a manner that highlights those that perceive change to land titling or reversion to commercial land tenure system as harmful to their interests and so attempt to resist or frustrate it, as well as those that see change as conducive to the promotion of their interest.

The third assumption is that the process of pro-poor change, of necessity, entails the mobilization and use of human and material resources. Since people cannot change they mobilize state apparatus and use resources without changing their relations with one another, their distributing and utilizing resources carried without changing patterns of social relations.

Grindle (1986) had sought to assess the impact of agrarian expansion on the rural poor, and show the important role of the government (state) he concluded that the efforts in the direction of modernizations agriculture have: (i) brought a greater concentration of landholding, which has simultaneously fomented a proliferation of "minifundia" and



for the urbanite (Soludo, 2004). This has been negated by the LUA, because land 'owners' or users lack right of transfer, which is the highest land rights; they cannot sale their land for re-investment. Also, they cannot use rural lands for collateral for micro credit facilities because they do not have certificate of occupancy. With the exception of negligible amount of credit sourced from relatives, 73.6 % of rural farmers and 49.4 % of urban farmers lack access to bank credits (CBN/World Bank, 1999:101). The major factor underlying inadequate access to banks' credit is inability of formal financial institutions to accept rural land for collateral, because of absence of Certificate of Occupancy (C of O). Therefore, it has also created a poor land market and weakens rental services, which can stimulate growth in agriculture and other economic sectors.

Third, LUA invested overwhelming powers on the Governor (one man) to determine the economic fate of millions of peasants. First, the designation of the urban and non-urban areas of a state is the exclusive prerogative of the state governor, which gives him power to grant statutory rights of occupancy in any part of the state. Secondly, any alienation or transfer of a statutory right of occupancy requires the consent of the state governor, urban or non-urban land. Thirdly, proof of the right of occupancy, that is, certificate of occupancy can only be granted by the state governor. Any person who holds a customary right of occupancy still needs to apply to the state governor for a certificate of occupancy. Fourthly, the appointment into Land Advisory bodies – Land Use and Allocation Committee (LUAC) and Land Allocation Advisory Committee (LAAC) is the exclusive prerogative of the governor. This is not only an infringement on peasants' rights to land and security, but also, an undemocratic land management system.

Fourth, right to compensation is outrightly abused. Customary landholder has been provided rights to compensation (1999 constitution section 44 (1) (a) (b)) if their property are acquired for public good. In practice this is hardly compiled with. Instead the government by circulars issued, has fixed rates for compensation and most of the peasant farmers are unaware of their right to negotiate for compensation, most often the land "owner" or users are schemed out of the whole exercises by those in authority. This is most glaring in mineral endowed communities, like Niger Delta, where Transnational Oil Corporations have virtually taken over all lands and water space for oil explorations.

Fifth, co-existence of multiple and mutually inconsistent bodies of law and institutions with overlapping and ill-defined mandates creates confusion. When different kinds of land (rural land, urban land, protected land; agricultural land) are managed by different agencies, the validity of land can be questioned, thus undermining confidence in the whole exercise. In many states, large areas of land are subject to different and competing

elites. This is because the vesting of land in state governors has created powerful systems of authority and political patronage. Those with access to the state power acquire land easily, by dispossessing peasant farmers' access to their lands, and converting such lands to golf fields, and other non-productive and non-agricultural purposes. Communal land tenure system have never been a constraint to agricultural growth, rather it provide peasant farmers the basic land rights, promote food production, ensure sustainability of environment, and economically more efficient, and most importantly, decentralizes political power, because land is, and has been, the basis for communal democracy.

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