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Land tenure reform in Nigeria : implications for agricultural development and problems of implementation

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RÉSUMÉ

L'agriculture de la Nigéria est fondée sur la terre. En dehors de la terre, un minimum de fonds, d'équipement et d'investissements non conventionnels, sont exigés pour la production agricole. Le système de production agricole est extensif, basé surtout sur la rotation des terres et des périodes de jachère.

La terre est la propriété de la communauté avec quelques cas de propriété familiale ou individuelle. Le droit de cultiver une terre plutôt qu'une autre dépend surtout du système des successions. Ce système est patrilinéaire et la terre peut être divisée per capita entre tous les héritiers de sexe masculin ou selon le nombre d'épouses ayant des garçons (per stirpes). Ce système d'héritage entraîne le morcellement des terres et leur dispersion.

Bien que certains héritiers ne s'intéressent pas spécialement à la culture, ils tiennent à conserver leur terre car, en l'absence d'impôts sur la propriété, ils disposent ainsi d'une source de revenus en liquide. Dans les régions rurales, la terre remplit également une fonction de sécurité sociale car il est toujours possible de la cultiver pour pourvoir à sa subsistance. Ceux qui n'ont pas hérité de terre peuvent cependant y avoir accès à condition de la louer à ceux qui la détiennent. Le montant de la location peut être tel qu'il absorbe la plus grande partie du surplus produit par le métayer. Celui-ci vit dans l'insécurité car il peut être chassé à la fantaisie des familles de propriétaires. Les métayers ne sont donc pas motivés à investir dans une agriculture de type scientifique car ils ne sont pas sûrs de profiter de ces investissements.

Les terres rurales ne sont pas librement aliénées par vente, par bail ou par hypothèque. Ceux qui n'héritent pas de terres peuvent difficilement en posséder.

Dans les villes, au contraire, les terrains s'achètent et se vendent plus facilement du fait des exigences de l'économie capitaliste. Mais il n'existe pas de cadastre sur une base nationale et la propriété d'un terrain, mal enregistrée, est difficilement identifiable. L'enregistrement des terres n'est pas obligatoire sauf dans quelques centres urbains. Le système prédominant d'enregistrement est celui des actes notariés mais ceux-ci ne confèrent pas de titre de propriété. Les terres urbaines et rurales sont sujettes à un certain nombre de passe-droits et les efforts de développement agricole du gouvernement et des entrepreneurs qui s'intéressent à l'agriculture s'en trouvent freinés.

Le gouvernement militaire fédéral a promulgué récemment le décret de 1978 sur l'utilisation des terres qui donne les pleins pouvoirs au Gouverneur militaire sur la propriété des terres dans chaque état. Ce décret a ôté tous les droits de propriété (intérêts) des détenteurs de terre en ne leur laissant que les droits d'utilisation.

Cet article examine le système de propriété antérieur au décret d'utilisation des terres ainsi que les conséquences sur le développement agricole et les difficultés auxquelles se heurte la mise en application du décret.

ABSTRACT

Nigeria's agriculture is land based. Apart from land, a minimum amount of financial capital, farm machinery and non-conventional inputs are employed in agricultural production. Agricultural production system is extensive, based mainly on shifting cultivation or rotational fallow.

Land is mainly communally owned with limited cases of family and individual ownership. Access to land is ascriptive, based mainly on inheritance system. The inheritance system is patrilineal and land may be divided per capita among the male heirs or according to the number of wives with male issues (per stirpes). The inheritance system gives rise to scattered holdings and farm lands are in non-contiguous plots.

Many of the heirs who inherited farmland may not be interested in farming, but still holds on tightly to the land. This is so because of the liquidity premium in landownership in the absence of land taxation. Land performs social security function in rural areas because they can always farm the land to meet their subsistence needs. Those who did not inherit land can however gain access to land but they are made to pay tribute to the landholders. The amount of tribute demanded may be such as to cream — off most of the surpluses produced by the tenant. The tenant in most cases do not have secure tenancy and they could be evicted at the whims of the landholding families. Tenants therefore have no incentive to invest in science — based agriculture because of the certainty that they will not enjoy the full benefits of their investments.

Rural land are not freely alienated by sale, lease or mortgage so that those who did not inherit land cannot easily acquire equity in land.

Urban land, on the other hand, is more easily bought and sold. This is in response to the requirements of the capitalist economy. However, there are no nationwide cadastral survey and ownership of different parcels of land are not properly identified and registered. Land registration is not mandatory, except in a few urban centres. The predominant system of registration is by deed and this confers no title. Urban and rural lands are subject to a number of abuses and constraint agricultural development efforts of the government and entrepreneurs interested in agricultural enterprise.

The Federal Military Government recently promulgated Land Use Decree 1978 which vests all the land in each state in its Military Governor. The Decree took over the proprietary rights (interests) of various land-owners leaving only use — rights.

This paper examines the land tenure system antecedent to the land Use Decree; its implications on agricultural development and problems of implementation of the Decree.

INTRODUCTION

Nigeria is predominantly an agricultural economy with agriculture employing about 58 per cent of the population and accounts for 40 per cent of the Gross Domestic Product (GDP) in 1973-74. Prior to 1971, Nigerian agriculture was the most important earner of foreign exchange. However, crude oil (petroleum) now supplies over 90 per cent of the foreign exchange as shown in appendix (1).

Nigeria has a land area of 98.3 million hectares out of which 71.2 million hectares are cultivable. But only 34 million hectares are currently under cultivation (2). This means that 72 per cent of the total land area are cultivable and only 48 per cent of this is under cultivation representing 37 per cent of the total available land. The purpose of this paper is to examine the current land reform measure, specifically Land Use Decree 1978, promulgated by the Nigerian Federal Military Government, as it relates to agricultural sector. The paper will be discussed in six sections.

Section two will present an overview of the customary land tenure systems... Section three will discuss major provision of the Land Use Decree, while section four will discuss problems

of implementation as well as proffer solutions to the problems identified. Section five will explore the implications of the Decree on agricultural development and section six will provide the summary and conclusions.

NIGERIA'S LAND TENURE SYSTEM: AN OVERVIEW

The land tenure system in Nigeria is not uniform. It varies from community to community. There are also variations between the geographic Northern and Southern Nigeria's land tenure system due to differences in political experience and administrative policies of the past colonial masters. The colonial masters left their imprints on the tenure system. The land tenure system in the North and the South will be considered separately to highlight the similarities and the differences.

Land Tenure System in the North

The thure position with regards to the customary land tenure system in the North is not precisely known because of

(1) Federal Republic of Nigeria, *Economic and Statistical Review 1973* (Lagos : Central Planning Office 1974) p. 5.

(2) Federal Ministry of Economic Development (F.M.E.B.) 1975, p. 63.

two major disturbances to the system. The first was the conquest of the original Hausa States by the Fulani in about 1804, and the second was through the conquest of the Fulanis by the British in 1902-03.

The British effectively took over the control of the native population from the Fulanis by declaring themselves the overlord of the land through the « Land and Native Rights proclamation act » of 1910.

This act declared the whole of the lands of Northern Nigeria, whether occupied or not to be native land. The law conferred upon Government absolute control and ownership of land in Northern Nigeria. « All native land, and all rights 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 governor and shall be held and administered for the use and common benefits of the natives of Northern Nigeria; and no title to occupation and use of any such lands shall be valid without the consent of the governor ». However, the governor is to have « regard to native laws and customs existing in the district in which the land is situated, when exercising his rights ». The law empowers the governor :

to grant rights of occupancy to natives of Northern Nigeria and others;

to demand a rental from the natives and non-natives for the use of the land granted;

to revise the rent payable at intervals of not more than seven years.

A certificate of occupancy (statutory for non-natives and customary for natives) was to be granted to natives and non-natives alike. However, in practice, no certificate of occupancy was granted to the natives and no rents were demanded from them. But all farmers are by law either statutory or customary occupiers and by implication they are state tenants. « This state of affairs led to divergencies in the states and the individual's outlook about land. While the state professes to socialize the land, individuals (particularly the wealthy but also the not so wealthy ones) seem to adhere strictly to the capitalist principle of private ownership of land » (3). This differences in out-look between the state and private individuals made the formulation and/or execution of a rational land use policy difficult to realise.

Southern Nigeria's Land Tenure System

The land tenure system in Southern Nigeria is also not homogeneous because of local sovereignty in land matters. There are, however, some common elements in the system.

« In the early stages of the native system, upon the acquisition of lands, by conquest or settlement by members of a given community, the lands so acquired or settled upon would be apportioned among those worthy of them in the order of merit » (4). Alternatively, the original immigrants acquired the land by squatting on it.

In Southern Nigeria, land is the property of the extended family or the community. Land is corporately owned. « The term community may refer to a family, a clan or a village consisting of a number of kindred or lineage groups or families. A family in the Nigerian sense usually consists of a man, his wife or wives and children, the wives of his sons and their children and other close relatives » (5).

The general situation is that the group exercises the rights of ownership. The group manages the family land and allocates this to members according to needs. The individual does not possess absolute title to the land. His right is co-equal to that of the other members of the community to which he was born or adopted.

The individual use rights are established by initial clearance and use of land, by mixing his labour with the soil and appropriating the land from the state of nature.

The rights of the individual to use the land are protected as long as he continues to make a beneficial use of the land; also his right to use evidently extend to, and is transferred temporarily to, the pledgee should he pledge the land to another person as security for debt.

Individual use rights are heritable, becoming a family property to be shared out among the heirs according to the rules of inheritance honoured, when the initial user ceases. This right to use the land remains with the initial user of the land and his heirs who also become past owners until the land is abandoned. When the land is abandoned, the residual interest of the community in the land is reasserted and the land reverts to the community to be held until it is required by another member of the group or it may be allocated to any stranger who « begs » for it. The holder of usufructuary rights lacks the capacity to alienate the land due to the allowable field of discretionary action implicit in the terms of grant.

The above stated land tenure system has given rise to a number of problems : duplicity of ownership with the consequent excessive transaction costs, fragmentation of land into uneconomic sized tracts due to the rule of inheritance and inalienability of land which makes land part of the physical capital but not a part of the financial capital.

It was against this background that the Federal Military Government recently promulgated a Land Use Decree.

LAND USE DECREE 1978 : MAJOR PROVISIONS

The Land Use Decree 1978 attempts to solve all the land tenure problems by fiat. Important provisions of the decree states inter alia, « all land comprised in the territory of each state in the Federation are vested in the Military 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 provision of this decree » (6).

All land in urban areas are to be under the control and management of the Military Governor; while all rural lands

(3) Segun FAMORIYO, « A suggested Framework for Agrarian Reform in Nigeria », *quarterly Journal of Administration*, Vol. 9, n° 4, July, 1975.

(4) CASELY J.E. HAYFORD. *The Truth About the West African Land Questions*, 2nd Edition, (Frank Cass et Co., Ltd 1971) p. 55.

(5) H.A. OLUWASANMI, *Agriculture and Nigerian Economic Development*, (Ibadan : Oxford University Press, 1966).

(6) Federal Republic of Nigeria ; Decree n° 6 - Land Use Decree 1978, section 1.

are subject to the control and Management of the Local Government. Where land under agricultural use is compulsorily acquired for public purpose, the Local Government was enjoined to allocate alternative land to the dispossessed farmer, in addition to payment of compensation for the unexhausted improvements on the land. With respect to land in an urban area, « where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of the Decree ». On the other hand, where the land is undeveloped, a person is entitled to « one plot or portion of the land not exceeding half hectare in area » and all the land in excess of one half hectare shall be forfeited to the Government.

The Decree made no mention of the upper limit to the size of land to be granted in respect of new allocations especially in urban areas. Land Use Committees are to be set up for the allocation of urban and rural lands.

PROBLEMS OF IMPLEMENTATION AND SUGGESTED SOLUTIONS

A myriad of problems mainly human, social and administrative are associated with the implementation of the decree. Some of the problems and their associated suggested remedies are discussed as follows.

a There is no precise definition of urban and rural lands. This is being solved through political decision by the government.

b Determination of who owns what parcel of land in the rural and urban areas presents a problem. There is no cadestral survey and not many people cared to register their interests in land. Besides, deed registration is the commonest system in many urban centres. The problem with deed registration is that the titles are not verified. Hence it will be difficult if not impossible to recover land in excess of sizes permitted by the Decree from the land owners. It is neaten to acquire every undeveloped land with payment of compensation.

c The decision not to pay compensation to the original land owners poses another problem. It will be difficult to wrest land away from land-owing families without violent struggles and loss of lives. A would be developer of land seized from another family courts trouble. The reactions of the dispossessed will under-standly be hostile. Compensating dispossessed land owners is advocated so as to partially assuage their feelings.

d Determination of compensation payable for unexhausted improvement may be intractable. There is the need to employ the services of real estate surveyors for the assessment of fair compensation.

e Administrative problems of various dimensions are expected. Vesting land in the State devolves more problems on the administrators some of whom are already over burdened. Administrators are assumed to be disinterested and honest and to have complete and perfect knowledge of public goodness and perfectly defined objectives. It is difficult to sustain most of the above assumptions in view of the crises of

confidence that arose in the allocation of public land in Victoria Island and South-West Ikoyi and the findings of various commissions of inquiry since independance-October 1, 1960. There are not enough professionally qualified estate surveyors, valuers, etc. to handle the allocation and determination of compensation for unexhausted improvements. There will be delays in allocation due to the usual bureacratc ineptitude (redtapism). Political manipulation of the allocation procedure is to be expected. « Politicians are not likely to deny themselves the use of these instruments of power that has been put in their hands; » (7) by denying their political opponents an allocation or using it to secure party patronage. Also the politicisation of land allocation confers even more widespread power of patronage, on the bureaucrats than it does on the politician. Favouritism should be expected to be wide-spread and as far as the gullible masses are concerned, the honeymoon will soon be over as the more affluent citizens are given preferential treatment. There is therefore need to establish checks and balance to avoid wide spread abuse of power. The separation of public and private functions of government officials should be properly enforced. However, the ideal is to ensure a separation of economic and political powers.

« If economic power is kept in separate hands from political power, it can serve as check and a counter to political power » (8).

f A number of states, for example Imo, Anambra, Lagos are short of land. But statism has almost replaced tribalism in Nigeria, thus vesting the land in the State governor provides no escape valve for states facing acute land shortage. It may be almost impossible to secure an allocation of land in any state other than one's own State of origin.

The situation will be helped if it is made mandatory to make a grant of land to whoever applied for an allocation, irrespective of their state of origin, provided they are Nigerians and satisfy other criteria for an allocation.

g Rural land presents a special problem because most of the people derive their livelihood from the land in the absence of alternative employment opportunities. There is, understandable an emotional attachment to the land. Fragmentation of land has reached an advanced stage. It will not be easy to persuade farmers to vacate their lands to make way for a commercial producer, who must have contiguous plots.

h There is also the problem of finding alternative farmland in sufficient amounts to resettle the displaced farmers. Nigeria has a land area of 98.3 million hectares 71.2 million of which is useful for agricultural production. Nigeria has an estimated population of 80 million about 70 per cent of which are farmers. Thus about 60 million Nigerians are involved in agricultural activities. The man-land ratio is therefore very high and the amount of land available to each farmer is consequently limited. If the structure of employment remains unchanged, it will not be possible to increase the size of the farm and the scale of operation of majority of the farmers.

(7) A. A. WALTERS, *The Politicisation of Economic Decisions*, (London : Aim of Industry Series), p. 2.

(8) Milton FRIEDMAN, *Capitalism and Freedom*, The University of Chicago Press, Chicago and London, 1962, p. 16.

The agrarian reform measures adopted in Nigeria : changes in ownership structure and credit support system may enhance agricultural development but it may not solve the problems of the peasantry. The 1978 land use Decree may free the land from the stranglehold of the community members, land speculators and heirs who are not interested in the productive use of the land, thus making land available to potential farmers. By eliminating the payment of Isakole or rent, the Decree will liberate the creative energies of erstwhile customary tenants by ensuring that they reap the benefits of their labour without having to share the proceeds with the landlord. The member of the family who has been farming a piece of land can apply for a Certificate of Occupancy, thus freeing the land from the incumbrances inherent in family land.

Land Use Decree can enable a commercial producer acquire maximum amount of 500 hectares for agriculture of 5,000 hectares for grazing, rent-free.

The Decree has also reduced all land holders or users to lease-holders. This eliminates the necessity of investing large sums of money in acquiring title to land or build up equity in land. A judicious execution of the Decree may remove the bottleneck of land availability, a problem usually faced by large scale or commercial producers. Credit policies can be employed to encourage the adoption of both biological and mechanical technology. Provision of credit will enable farmers acquire « modern inputs » including improved seeds, fertiliz'er, lime, agricultural chemicals and livestock feeds. This will increase food production and may reverse the present trend and thereby make *Nigeria self reliant in food production*. On the other hand, the land use Decree may widen the gap in income distribution between the rich farmers and the poor peasants. There may result a large scale expropriation of peasant farmers in an attempt to provide land for the few commercial producers. Those who have political and economic powers may employ it to the disadvantage of the peasants.

Access to credit facilities may be linked to the status of the applicants and their station in life. Collateral requirements are often formidable; repayment ability often decides who gets the credit facility and since there can never be enough money to go round, 95 per cent of the peasant farmers may not secure institutionalized credit. Taking property by confiscation can have destabilising effects upon the investment decisions of the better off farmers. It may be regarded as a pointer to future continual levelling or a precursor of socialism.

SUMMARY AND CONCLUSIONS

As far as the masses are concerned, the land reform measure may turn out to be either a cornucopia or a Pandora's box, depending on how honestly and impartially it is implemented.

Pre-reform land tenure system guarantees limited access to all categories of land users, limited sovereignty to erstwhile landowner, freedom of enterprise, economic citizenship of the

(9) Land Use Decree, 1978, Section 50.

land and rights to private property in land but exploits the landless. The Land Use Decree attempts to eliminate or reduce abuses inherent in free enterprises system by taking over the radical title of land leaving only the use-rights.

Vesting all the land in the (Military) Governor concentrates both the economic and political powers in one hand. Concentrating power in the hand of the Governor expands the field in which arbitrary discretion and unlimited pre-rogative could be exercised. This power could be abused by an unscrupulous politician to satisfy his selfish ends. The Decree could also be used to dispossess political opponents. There is nothing in the Decree which imposes upper limit on the amount of land an individual can have provided the undeveloped land anywhere does not exceed half an hectare.

Government take over of land is predicated upon the assumptions that the politicians (government) will always be beneficent; that the administrators will be honest, dedicated and have unique perceptions of public good and can therefore administer the land in the best interest of the public and that the erstwhile landowners will voluntarily give up their lands and trust their survival to an impersonal government. However, a knowledge of Nigeria's history and political climate, does not justify the assertions.

To compound the problem of confidence in a public ownership solution, the performance of the administrators put in charge of allocating the limited public land in Victoria Island and Southwest Ikoyi left much to be desired. It points up the danger in giving a few administrators free hand to allocate or loot public lands without proper checks and balances.

The Decree has reduced all land users to lease holders. It further introduces some uncertainties as regards the rights of the erstwhile tenants vis-à-vis the landlords. By defining « occupier » as « any person lawfully occupying land under customary law and includes the sub-lease or sub-under-lease of a holder » (9) it means, in effect, that the customary tenant as well as the landowner are equally entitled to a grant of certificate of occupancy on the land. This provision, while freeing the tenant from payment of tribute, may work hardship on landowners who gave out most or all of their lands to tenants and rely on tribute payable by the tenants. They may not easily secure an allocation of land elsewhere since « unused » land is not easy to come by.

On the other hand the Decree may make it easier for potential farmers to acquire sufficient amount of land for farming. Granting certificate of occupancy to individual farmer may resolve the problems of duplicity of ownership and dubious transactions on the land. The farmer can easily raise a loan from Agricultural Banks using his land as the collateral. The Decree may bring an end to fragmentation of land into uneconomic sizes tracts by imposing a minimum size of holding below which subdivision will not be permitted. The Decree also forbids the sale of land without the approval of the government. This may put an end to the era of land-agents and speculators who sell the same piece of land to several persons.

The Land Use Decree 1978 holds empty promises unless it brings real improvements in the access to economic opportunities on the land and greater equity in income distribution to the mass of peasant farmers all over the country.

If the land Use Decree is properly executed it will go down

as a great social revolution. However, adequate care needs to be taken to avoid its being a pandora's box. The developmental art consist in rendering the tensions created by conflicts in property rights and land use relations, creative

rather than paralyzing. « Mastering of this art rests on political dialectic which constantly tests social reality by struggling to transform it » (10).

TABLEAU : NIGERIAN AGRICULTURAL AND PETROLEUM EXPORTS AS PERCENTAGE OF TOTAL EXPORT IN 1960-1976

Year	Total Exports (Million)	Agricultural Exports as a percentage of Total Exports	Petroleum Export as a percentage of Total Exports	Petroleum Exports (Million)	Petroleum Exports as a percentage of Total Exports
1960	339.4	282.4	83.32	8.82	2.60
1961	349.2	283.0	81.04	23.09	6.61
1962	337.0	260.0	77.15	33.48	9.93
1963	379.4	286.0	75.38	40.35	10.63
1964	429.4	304.0	70.80	64.11	14.93
1965	536.6	327.4	61.01	136.19	25.38
1966	568.2	292.6	51.50	183.95	32.37
1967	540.0	264.6	49.00	144.22	26.70
1968	467.0	269.7	57.75	73.99	15.84
1969	683.0	278.2	4.73	261.94	38.35
1970	885.0	286.8	32.28	509.79	57.60
1971	1,293.4	265.2	20.50	953.03	73.68
1972	1,411.5	187.7	13.29	1,156.96	81.96
1973	2,277.4	112.4 (1)	4.94 (1)	1,893.5	83.14
1974	5,794.8	159.0 (1)	2.74 (1)	5,365.7	92.60
1975	4,988.4	181.0 (1)	3.63 (1)	4,629.6	92.80
1976	6,622.4	217.8 (1)	3.29 (1)	6,196.2	93.56
1977	2,464.6 (2)	n.a.	—	2,335.4 (2)	94.76

(1) Cocoa only.

(2) January to May figures only.

Source : International Financial Statistics, various issues.