

A STUDY OF THE LEGISLATIONS AFFECTING PROPERTY RIGHTS IN GOMBE STATE, NIGERIA

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This study aims at examining legislations affecting property rights in Gombe State Nigeria. Findings from the study showed that legislations affecting property rights have a great significance in the development of Gombe State in particular and Nigeria and similar developing nations in general. By virtue of the Land Use Act of 1978, the Governor of Gombe State has been empowered to grant statutory rights of occupancy in any part of the State, whether urban or not. The 11 Local Government Area Chairmen were empowered to grant customary rights of occupancy confined to nonurban areas that fall within their respective jurisdictions. The study revealed that investment in land improvement and the increase in economic development vis a vis land rights in Gombe State are hindered by tenure rules such as stipulated in the Nigerian Land Use Act of 1978. Furthermore, land tenure insecurity, political/bureaucratic bottlenecks in land rights acquisition and other pertinent issues and challenges all contributed to stagnating economic development in the State. Hence, legislations on property rights in the state can be said to have both positive and negative effects on the economy of the state. It was recommended that for a vibrant and sustainable development in Gombe State, a new land tenure reform (with respect to legislations affecting property rights in the state) is imperative. The reform agenda should carefully consider the pertinent issues and challenges inherent in the present legislations, with a view to providing solutions to them.

Keywords: Property rights, Land use act, Legislations and land.

Introduction

Land to the people of Gombe state in Nigeria is an asset that portrays economic, religious, cultural and political significance. This conception held strongly until the colonial masters introduced new value perspectives with respect to land and landed properties through the promulgation of legislations with respect to landed property rights. In Nigeria apart from these legislations, there was no major all-encompassing law regulating land use in the nation until the Land Use Act of 1978 was enacted (Alabi, Okunola, Dabara & Odewande, 2012). According to Aluko & Amidu (2006), Land rights can be defined as ‘the rights to use, enjoy and exploit land including information about, decision – making around and benefits from it’.

Land administration in Nigeria as depicted by the Land Use Decree of 1978, brought about the centralization of land administration thereby defining property rights accorded to the state and its citizens accordingly (Fajemirokun, 2002). The resulting effect of this revolution still leaves much to be desired as instead of solving problems associated with land rights a new set of problems were observed to emerge as a

result of the promulgation of the Land Use Decree. Some few years back the Minister of the Federal Capital Territory of Nigeria announced the withdrawal of Certificates of Occupancy in the Federal Capital Territory. Similarly, serious demolitions of properties were undertaken resulting in the displacement of thousands of occupants in Abuja the capital city of Nigeria. All these are indicative of some of the challenges faced in the real estate sector in Nigeria that is linked to property rights (Babalakin, 2004). The Land Use Act of 1978 (LUA) originated as a decree of a military government, which advanced as a rationale for its introduction, the “limiting, inhibiting and divisive nature of land tenure in the country”. By abolishing private ownership of land, proponents of the LUA believed that it would: facilitate access to land for public and private use; promote tenure security and curb land related conflicts as well as land speculation, which had been driving land values upwards and out of the reach of most Nigerians. But after almost four decades of being in force, these goals are observed to be far from being achieved. The LUA provides that both the State Governor and Local Government Chairmen can grant rights of occupancy for any purpose. The State Governors exercises the power to grant statutory rights of occupancy in any part of the State, whether urban or not. While the Local Government chairmen are empowered to grant customary rights of occupancy in non-urban areas (Fajemirokun, 2002). Prior to that enactment, land ownership, and the title was governed by two (2) separate land tenure systems, one in Northern Nigeria and the other in Southern Nigeria. It should also be further noted that prior to the land tenure law in these two regions, land ownership was held in the family system as freehold in perpetuity especially in the Southern part of the country, while the rulers/emirs handled land ownership and administration in the North.

The concept of land as it existed in the pre-colonial African societies has been affected considerably by colonial rule. With the inception of the colonial period, there was a drift in the popular perception of land by Africans as a result of the changing economic importance of land during this period. The utility of land was conceived and appreciated mainly from its economic dimension as opposed to the traditional conception of land as a social and religious entity (Afeikhena, 2002; Obioha, 2008).

The impact of property rights in Africa has received relatively little attention in the literature. In the global context, earlier studies in the area of property rights included the important works by North & Thomas (1973) and Rosenberg & Birdzell (1986) they stress the role of property rights for economic growth and development and the strong influence of secured property rights on the stability and prosperity of the Western world. Other works included (Gastil, 1987; Scully, 1988; Barro, 1991; Torstensson, 1994; Besley, 1995; Alston et al., 1996 and Chris and Geoffrey, 2005).

This study aims at examining legislations affecting property rights in Gombe State Nigeria, with a view to drawing a link between on how it influences development in the State. The study addressed the following questions: What are the legislations affecting property rights in Gombe State? What is the significance of the legislations affecting property rights in Gombe State? What is the mode of operation of the legislations affecting property rights in Gombe State? What is the effect of the legislations on the development of Gombe State?

Study Area

The study area is Gombe State (referred to as the ‘Jewel in the Savannah’), located in the North-Eastern part of Nigeria (see Figure 1), it is one of the country’s 36 states. The State has a land area of 18,768 km² (7,246.4 sq mi) area, ranking the 21st of the 36 states of Nigeria. The State has a population of 2,353,000 persons, according to 2006 population census (NPC, 2006), ranking the 33rd of the 36 States of Nigeria. However, today the population is projected to be 2,842,498 persons, using 3.2% growth rate (National Population Commission Gombe State Office). Gombe state was created out of the then Bauchi state on the 1st of October 1991 with its headquarters situated in Gombe. The state is located between latitude 9°30’ and 12°30’N and longitudes 8°45’ and 11 °45’E of the Greenwich Meridian. It shares common borders with Borno, Yobe, Taraba, Adamawa and Bauchi states. Administratively, the state is divided into eleven (11) Local Government Areas, these are: Akko; Funakaye, Gombe, Kaltungo, Shongom, Billiri, Balanga, Bajoga, Dukku, Kwami and Yamaltu-Deba (see Figure 2). Gombe has two distinct

seasons, the dry season (November-March) and the rainy season (April-October) with an average rainfall of 850mm. The State has many tribal groups which include Tula, Tangale, Waja, Fulani, Bolewa, Pero/Shonge, Cham, Lunguda, Dadiya, Hausa and Kamo/Awak. Hausa is the common language used in the state. The Majority of the State's populace are engaged in Agricultural activities such as farming and rearing of animals. Hence land is an asset desirable by all for both agricultural and non-agricultural purposes.

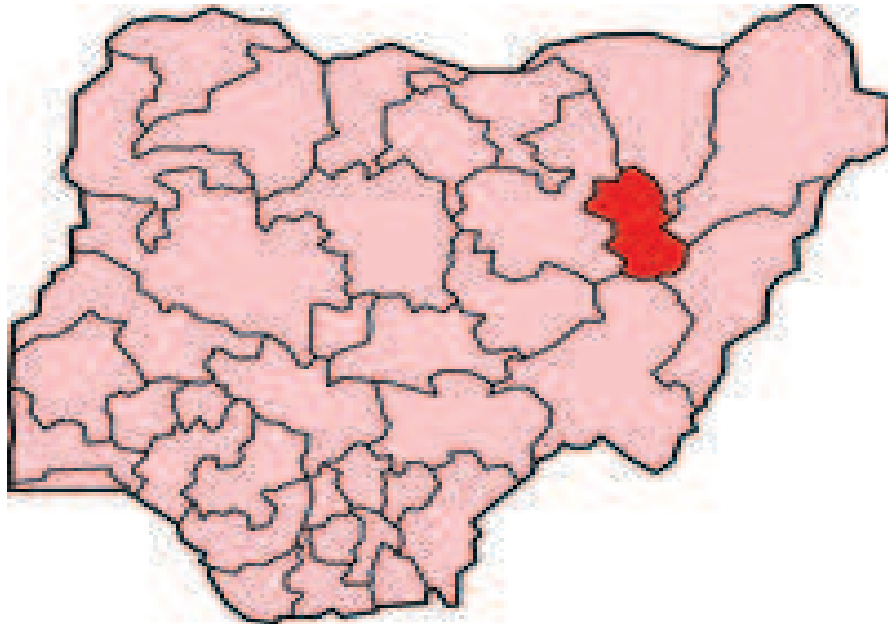


Figure 1. Map of Nigeria showing Gombe State



Figure 2. Map of Gombe State showing the 11 LGA's

Related Literature

Property Rights: Meaning and Types

Property rights have been defined as a bundle of characteristics; exclusivity, inheritability, transferability, and enforcement mechanisms (Alchiam & Demsetz, 1973). These rights define the uses that are legitimately viewed as being exclusive and who has these exclusive rights (Feder & Feeny, 1991). Property rights can be categorized into four basic types: private, common, state and nonproperty (or open access). In the law and economics literature, 'private property' implies property owned by individuals holding rights to use, dispose of, and exclude others from the resources. 'Common property' denotes collective ownership of landed property whereby owners (usually a community) cannot exclude each other from use but can exclude strangers. 'Public' or 'state' property refers to a form of common property supposedly owned by all the citizens, but typically controlled by the government. The government has the power to transfer temporarily some of its rights to private users or to communities. 'Nonproperty' or 'open access' shows a situation in which a resource has no owner; all are at liberty to use it, thus no one has the right to exclude anyone else (Feeny et al, 1996; Afeikhen, 2002).

Legislations Affecting Property Rights in Nigeria

Nonso (2010) asserted that various legislations, decrees and edicts affecting land in Nigeria were promulgated during the military government. The Federal Military Government first promulgated the Rent Control Decree No. 15 of 1966; which was subsequently repealed by the Rent Control (Repeal) Decree No. 50 of 1971. Another legislation affecting property rights was the Requisition and other Powers Decree, No. 39 of 1967 which was promulgated to empower the Army and Police to requisition land and other property during the period of the emergency. The Decree was amended in 1975 to create the central and state compensation committee to deal with matters of compensation. This was subsequently followed by the state lands (compensation) Decree No. 38, 1968, which deals with issues of compensation in respect of land acquired by the state. This legislation was also repealed in 1976 by the Public Lands Acquisition Decree No.33. In 1978 the Land Use Act was promulgated, presently it is the all encompassing law regulating land use in all the states of the federation (Gombe State inclusive).

Significance of the Legislations Affecting Property Rights

Real estate has continued to play a significant role in man's existence. The three basic necessities for man's sustenance includes: food, shelter and clothing and all these three essentials have some connection to land. Food grows out of land while shelter is affixed to it, and man's clothing is made largely from what grows out of land. There is no doubt that land occupies a significant place in man's wealth, wellbeing, sustenance and economic development. Hence, creating legislations affecting the use of this significant index in man's life is imperative. (Miceli et al, 1998; Besley, 1995; Alston et al, 1996, Chriss and Geoffrey, 2005).

Nuhu (2011) asserted that security of tenure and land rights of citizens is an important foundation for economic development. The author opined that land titles are the main sources of collateralization for obtaining credit from informal and established financial institutions. Consequently, securing land rights and land titles is particularly relevant for all socio-economic classes in the nation's economy but especially to the farmers whose pervasive poverty to date derives from not having definitive property rights appropriate to a market economy. Furthermore, fees and taxes on such landed properties are very important sources of revenue for governments particularly at the State and Local Government levels.

Legislations on Property Rights in Northern Nigeria

According to Nonso (2010), before 1900, the area later regarded as “Northern Nigeria” was administered by the Royal Niger Company by charter of the British Government. The company had during this period acquired all the land along both sides of the Rivers Niger and Benue. On the declaration of the protectorate, the government took it over and it was converted to Crown Lands. Secondly, having conquered the Fulani who were the reigning tribe in the North, all lands that were being administered by them were taken over by the British Government. The land thus taken over from the Fulani Emirs were classified as Native Lands. The distinction between Crown Lands and Native Lands was that whereas crown land was vested in the Governor in trust for Her majesty. Public Land was vested in the Governor in trust for the people. Series of legislations were enacted to affect these fundamental charges. For example, the land and Native Rights Proclamation 1908 being re-enacted with amendments by the land and Native Rights Ordinance of 1916 was promulgated. This was the position until the Land Tenure Law 1962 was enacted by the Northern House of Assembly. This Law basically re-enacted the 1916 Law with some amendments. The provision that no occupation without the consent of the Governor was valid was amended to refer to occupation by non-natives, and the power of the Governor became vested in the minister (later commissioner) responsible for land matters. The interest which an individual could have in land is a right of occupancy. The right of occupancy could be statutory or customary. The statutory right of occupancy was one granted by the Governor while the customary right of occupancy is one derived by force of customary law.

Legislations Affecting Property Rights in Gombe State

In Northern Nigeria (Gombe State inclusive) land was held and administered for the use and common benefit of the people who held a right of occupancy over it and such rights were subject to the control and disposition of the native authority (Babalakin, 2004). State ownership of land in Nigeria can be traced to the 1861 Treaty of Cession which ceded the colony of Lagos to the British Crown, subject to the customary rights of the local people. Before 1963 land was vested in the Queen, and when Nigeria became a Republic in 1963, it was vested in the Federal Government. Thus, under customary law, land was generally vested in communities and families in the South, whereas in the North land was vested in authorities for the use and benefit of the people. This was the position with our land tenure system up till 1978 when the Land Use Act was introduced (Babalakin, 2004). Under the Land Use Act, a person’s right of occupancy may be revoked by Government for overriding public interest. All land comprised in the territory of a State is vested in the State Governor who holds in trust for the use and common benefit of all Nigerians. Under this uniform system of land tenure, the highest interest in land is a right of occupancy. This can either be a statutory right of occupancy, which is granted by the State Governor in respect of land in both urban and non-urban areas and a customary right of occupancy, which is granted by a Local Government in respect of land in a nonurban area (Fajemirokun, 2002).

There are eleven (11) Local Government areas in Gombe State, these are: Akko; Funakaye, Gombe, Kaltungo, Shongom, Billiri, Balanga, Bajoga, Dukku, Kwami and Yamaltu-Deba. In Nigeria, the Local Government Areas are recognized as a separate and independent arm of government. Nevertheless, despite being the level of government closest to the people, they are not vested with any title in land. There is just a provision to the effect that the LAAC is charged with advising Local Governments on (Fajemirokun, 2002).

Effects of Legislations on Property Rights in Gombe State

There is broad consensus in the literature that secure individual land rights will increase incentives to undertake productivity enhancing land-related investments. More secure property rights could affect productivity by improving household’s security of tenure and thus their ability and readiness to make

investments; providing better access to credit; and reducing the transaction costs associated with land transfers (Afeikhena, 2002). These effects to some extent are congruent with what is happening in Gombe State. However, investment in land improvement and the increase in economic development vis a vis land rights related issues in Gombe State are hindered by tenure rules such as stipulated in the Nigerian Land Use Act of 1978. Furthermore, land tenure insecurity, political/bureaucratic bottlenecks in land rights acquisition and other pertinent issues and challenges all contributed to stagnating economic development in the State.

Conclusion

The study examined legislations affecting property rights in Gombe State Nigeria. It traced the history of legislations affecting property rights in Northern Nigeria from 1900 (when land issues were administered by the Royal Niger Company charter of the British Government) to date. The study examined several legislations promulgated by the Nigerian government with respect to property rights. Findings showed that legislations affecting property rights have a great significance in the development of an economy. By virtue of the Land Use Act of 1978, the Governor of Gombe State has been empowered to grant statutory rights of occupancy in any part of the State, whether urban or not. While the 11 Local Government Area Chairmen were empowered to grant customary rights of occupancy confined to nonurban areas that fall within their respective jurisdictions.

The study was congruent with what was found in literature with respect to the effects of legislations affecting property rights on the development of the state. However, the study revealed that investment in land improvement and the increase in economic development vis a vis land rights related issues in Gombe State are hindered by tenure rules such as stipulated in the Nigerian Land Use Act of 1978. Furthermore, land tenure insecurity, political/bureaucratic bottlenecks in land rights acquisition and other pertinent issues and challenges all contributed to stagnating economic development in the State. Hence, legislations on property rights in the state can be said to have both positive and negative effects on the development of the state.

It was recommended that for a vibrant and sustainable development in Gombe State, a new land tenure reform (with respect to legislations affecting property rights in the state) is imperative. The reform agenda should carefully consider the pertinent issues and challenges inherent in the present legislations with a view to providing solutions to them.

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