

An Appraisal of the Constitutional and Statutory Framework for Women's Access to Land in Nigeria

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Abstract

This paper examines the legal and constitutional framework for women's access to land in Nigeria. The study adopts the doctrinaire research method by reviewing relevant constitutional and statutory provisions and judicial decisions. The 1999 Constitution of Nigeria does not positively guarantee women's access to land beyond the right to acquire and own immovable property anywhere in Nigeria, the right not to be expropriated of property and the right not to be discriminated against on the ground of sex, which are guaranteed to every Nigerian. There is also no ordinary law in Nigeria which specifically guarantees to women access to land. The provisions of the African Charter on Human and People's Rights for equal access to public property and equality before the law have not been invoked to address the issue of equitable distribution of land in Nigeria. The Land Use Act of 1978 did not provide for equitable distribution or redistribution of land in favour of women or at all. The modes of acquisition of land under the Act are in favour of men as a result of some social, political and economic factors, including the low presence of women in leadership and political positions. While the Land Use Act authorizes compulsory acquisition of land for overriding public interest, land so acquired cannot be allocated to private persons. The situation has resulted in inequitable distribution of land to the disadvantage of women. The constitutional provisions which protects land rights constitute obstacle to equitable redistribution of land in Nigeria in favour of women. Consequently affirmative redistribution of land in favour of women calls for constitutional and statutory amendments as well as enforcement of the provisions of the African Charter for equal access to public property and equality before the law.

Keywords: Women's access to land in Nigeria, Land Use Act, Constitutional framework for women's access to land,, equitable redistribution of land, African Charter on Human and People's Rights and women's access to land.

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1. Introduction

The issue of equitable distribution of land comes within the broader issue of gender equality and gender equity which have taken a centre stage in the world today. There is a gamut of international instruments for the protection of women's rights.¹ These instruments provide not only for formal equality between the female and male gender but also for equality in concrete terms. They call for economic empowerment of women and affirmative action to redress past inequities and unequal treatment of women. Economic empowerment of women is a *conditio sine qua non* for gender equality and realization of women's human rights.

The International Commission of Jurists (ICJ) in the Declaration of Bangkok recognized that the rule of law and representative government are endangered by hunger, poverty and unemployment; that in order to achieve social, economic, and cultural development, sound economic planning is essential; that in particular, measures of land reform to assure fair distribution and its most economic utilization may be necessary. This declaration negates the commodity theory of land and supports the assumption that land and land use serves social and economic purpose.²

Equitable distribution of land impacts on equitable distribution of income and the incident of poverty. Research has shown that countries like Japan, Taiwan, South Korea, and Costa Rica, which have combined economic growth with equitable distribution of landholding, have been able to achieve a relatively more equitable distribution of income, while countries which have allowed the concentration of landholding to continue are suffering from a higher incidence of poverty and less equitable distribution of income.³ There are policy documents in Nigeria that recognize the significance of enhancing women's access to land. For instance, the National Policy on Women provides as follows:

Full participation of women in the economic programmes of the country can become more meaningful when they have the resources to back-up their aspirations and newly acquired self-

¹ Moreover, gender equality and women's empowerment concerns continue to play central themes in global treaties, covenants, and declarations.

² James, R.W. *Nigerian Land Use Act: policy and principles* (Ile-Ife: University of Ife Press, 1987 p. 16.

³ See N.T. Quan and A.Y.C. Koo, "Concentration of Land Holdings: An Explanation of Kuznet's Conjecture, *Journal of Development Economics*, 18 (1985) pp. 101-17 cited in Kly, Y.N. "Human Rights and Socio-Economic Policy" (1992) 2 *JHRLP* 124-125.

consciousness/image. Government shall ensure removal of all constraints posed by customary laws and practices to women's rights to land, either by acquisition and/or by inheritance.

The African Peer Review Mechanism (APRM) Country Review No. 8 in respect of Nigeria observed that Nigeria needs to review her land law and land rights and that land reform will allow Nigeria to change inequitable ownership structures.¹

This study adopts the doctrinaire research method – content analysis of judicial decisions and statutory provisions. The paper will critically examine the constitutional and statutory provisions relevant to access to land by women in Nigeria with a view to determining whether they promote or inhibit women's access to land. While customary and Islamic practices affect women's access to land in Nigeria, they are outside the scope of this paper. Recommendations will then be made on how to address the issue of women's access to land in Nigeria, if necessary. The author acknowledges the support of TETFUND for the research.

2. The 1999 Constitution and Women's Access to Land

Land and property² rights are guaranteed in two sections of the 1999 Constitution of Nigeria – sections 43 and 44. Section 43 guarantees the right to acquire and own moveable and immovable property in any part of Nigeria, while section 44 guarantees the right not to be expropriated of property. The Constitution also guarantees the right to freedom from discrimination on, among other grounds, ground of sex, in the application of any law or in any executive or administrative act³. The question is whether these constitutional provisions enhance women's access to land. We shall now examine these provisions.

2.1. Right to Acquire and Own Immovable Properties Anywhere in Nigeria

Section 43 of the 1999 Constitution of Nigeria provides as follows:

43. Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable properties anywhere in Nigeria.

This provision of the 1999 Constitution is a novelty as it was not contained in the previous Nigerian constitutions.⁴ What the section sets out to achieve or add to section 44 is not clear.⁵ The import of the provision in relation to women's access to land includes that women have the legitimate right to acquire and own landed properties anywhere in Nigeria. Consequently, any law, including customary or Islamic law, that seeks to deprive women or men of the right will be unconstitutional. In *Asika v Atuanya*⁶, a case dealing with the issue of right of female members of a family to inherit equally the landed properties of their deceased father, the Court of Appeal observed that sections 42 and 43 of the 1999 Constitution prohibit discrimination against women in whatever dimension. The import of the decision is that discriminatory inheritance practices and customs go against the right of any person to own immovable property in any part of Nigeria. In any case, it is doubtful whether this interpretation is within the contemplation of the drafters of the Constitution. Furthermore, section 43 of the Constitution has not otherwise positively addressed the issue of equitable distribution of land in favour of women.

Another constitutional provision bordering on land right is section 44 of the 1999 Constitution.

2.2. Right Not to be Expropriated of Property

Section 44 provides:

(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things:

- a) requires the prompt payment of compensation therefor; and
- b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Other limitations on the right are contained in subsection (2) of section 44. Any deprivation of the right not to be expropriated of property which cannot be justified on any of the permitted grounds has been held to be

¹ See APRM Country Review Report No. 8, Country Review Report of the Federal Republic of Nigeria, October 2008 p. 340. The report is also accessible through www.nepad.org/aprm or www.aprm-international.org

² The word "property" embraces land but goes beyond land. See Okany, M.C. *Nigerian Law of Property New Edition* (Enugu: Fourth Dimension Publishing Co. Ltd, 2000) p. 1 for the meaning of the word "property".

³ Section 42(1)

⁴ The provision has no equivalence under the 1960, 1963 and 1979 Constitutions of Nigeria.

⁵ For further reading see on this Ogbu, O.N. *Human Rights Law and Practice in Nigeria: 2nd Revised Edition Vol. 1* (Enugu: SNAAP Press Ltd, 2013) p. 411.

⁶ [2008] 7 NWLR (pt. 1117) 484 at 518.

unconstitutional in the cases of *Pennock Ltd v Hotel Presidential*¹ and *Onyiuke v ESIALA*.²

It must however be noted that just like section 43, section 44 of the 1999 Constitution guarantees a negative right. It merely protects the right to land (and other property) both for men and women who have landed properties or other property. In other words, a woman who does not have land does not enjoy the protection afforded by sections 43 and 44 of the 1999 Constitution in relation to land.

Unlike the constitutional bill of rights, Article 14 of the African Charter on Human and Peoples' Rights which guarantees the right to property enables encroachment on the right in the interest of public need or in the general interest of the community, though such redistribution to redress inequitable ownership structure of land holding can be justified on the basis of public interest. In any case, it was held by the Supreme Court of Nigeria in *Abacha v. Fawehinmi*³ that though the provisions of the African Charter on Human and People's Rights are enforceable in Nigerian Courts since the Charter has been domesticated,⁴ the Charter is inferior to the Nigerian Constitution. In the circumstance, the Charter cannot be relied upon for redistribution of land in public interest or to redress past inequities against women in view of the constitutional injunction against expropriation of property.

In the circumstance, the constitutional protection of property rights is an obstacle to equitable redistribution of land in Nigeria. This means that equitable redistribution of land can only be achieved upon amendment of sections 43 and 44 of the 1999 Constitution.

We shall now consider whether the prohibition of discrimination on ground of sex by the 1999 Constitution enhances women's access to land.

2.3. Constitutional Prohibition against Discrimination on Ground of Sex

Section 42 of the 1999 constitution provides as follows:

- S. 42(1) – A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person
- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religions or political opinions are not made subject, or
 - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions.

In *Uzoukwu v Ezeonu IF*⁵ the Court of Appeal held that the right to freedom from discrimination guaranteed in section 39(1) of the 1979 Constitution is enforceable against the state and its apparatuses, and not against private persons. Accordingly, to invoke section 39(1) of the 1979 Constitution, the discrimination envisaged against a person must have been based on law or executive acts and must be an action by government or its agencies.⁶ In any case, the courts have relied on the provision to protect the inheritance rights of women, including inheritance of land.⁷

It has been contended that the prohibition of discrimination is permissive of affirmative action and compensatory discrimination to redress past inequities and inequalities.⁸ The Asian Cultural Forum on Development (ACFOD) justified affirmative action or compensatory discrimination for the purpose of achieving social justice. In their view, social justice means not just absence of discrimination on grounds of sex, race, religion etc, but affirmative action and compensatory discrimination to redress inequalities and inequities.⁹ In similar vein, the Bloemfontein colloquium recognized the fact that the principle of equality requires public authorities to take affirmative action to diminish and eliminate conditions which cause or perpetuate discrimination and to ensure equal access to and enjoyment of basic rights and freedoms. The significance of the foregoing discussion is that the constitutional provision against discrimination on ground of sex will not constitute a hindrance to any affirmative action to ensure women's access to land. This proposition becomes

¹ [1982]12 SC 1

² [1974] ECCLR

³ [2000] 6 NWLR (pt. 660) 228-259

⁴ See African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. A9 Laws of Federation 2004.

⁵ (1991) 6 NWLR (pt. 200) 708.

⁶ The view that the right to freedom from discrimination cannot be enforced against individuals or private persons cannot be supported. Where a person seeks to rely on discriminatory laws the right can be enforced against the person.

⁷ See Ogbu, O.N. *op. cit.* p.

⁸ *Ibid.*

⁹ See Empowerment, Justice and Social Change: A shared Struggle: Report of the Chiengmal Workshop for Middle-Level Leadership in Asian NGOS (ACFOD), Bangkok, 1990. Cited in A.V. Oyajobi, "Human Rights and Social Justice in Nigeria: Issues, Dilemmas and Challenges" (1993) JHRL & P. Vols. 1,2,3, P.16

clearer when section 42 of the Constitution is read together with section 17(1)(a) under the fundamental objectives and directive principles of state policy which provides:

17(1) – The state social order is founded on ideals of freedom, equality and justice.

(2) – every citizen shall have equality of rights, obligations and opportunities before the law.

The fundamental objectives and directive principles of state policy are intended to set the pattern of development of policies.¹ The economic objectives under section 16 include “the distribution of material resources to serve the common good”; and “the avoidance of the concentration of wealth or the means of production in the hands of a few individuals or a group”.²

In any case, by section 6(6)(c) of the constitution, the provisions of the fundamental objectives and directive principles of state policy are not justiciable in court. Moreover, the various governments in Nigeria do not appear to be observing them. Nwabueze³ lamented that experience had informed him that the fundamental objectives and directive principles of state policy in the 1979 Constitution have remained dead letters. In his own words:

As I read and re-read the chapter on Fundamental Objectives and Directive Principles of State Policy in the 1979 Constitution of Nigeria, I cannot help pondering how beautiful the provisions are, but they are so only on paper, I doubt whether they have real existence for any of the governments that have ruled the country since then. I feel certain that none ever consulted them, much less trying to put them into practice. Such is the measure of the neglect and deprivation.⁴

It is, however, pertinent to observe that the prohibition of discrimination is not retrospective, and the concept of affirmative action cannot be relied upon to redistribute land owned by private individuals in view of the constitutional provision against expropriation of property.

3. The African Charter and Women’s Access to Land

We shall now consider the effect of the right of equal access to public property guaranteed by the African Charter on Human and People’s Rights on women’s access to land.

3.1. The Right of Equal Access to Public Property

Article 13.3 of the African Charter on Human and People’s Rights which guarantees the right of equal access to public property provides:

Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

This provision implies that there should be objective criteria for the allocation or distribution of state resources and public property, including land. The state is expected to be neutral and impartial in the contest of its citizens for its favour. However, this provision is obeyed in the breach as public property is being distributed in Nigeria for political patronage or based on other parochial interests without following any principle or guideline, as if the property belongs to persons in power. For instance, the auctioning of public lands and buildings at ridiculously low prices to specified individuals without the opportunity for other Nigerians to bid for the properties, which has been christened monetization of buildings or lands, constitutes a violation of the right of equal access to public property. Unfortunately, there is no known case where the violation of this right has been challenged in court in Nigeria.

In any case, the right guaranteed by Article 14 of the African Charter can only apply to public lands and not lands owned by private individuals. In respect of public lands, there should be objective criteria for their allocation or distribution to private individuals. However, the provision will not affect affirmative action in favour of women in the distribution of public lands.

3.2. Right to Equality before the Law and Equal Protection of the Law

Article 3 of the Charter provides:

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

From the social contract perspective, a state is an organisation in which the relationship of all members to it should be on equal terms, whether it pertains to rights, obligations, duties. Equality before the law means equality of rights and obligations. The concept of equality before the law does not seek to define private relationship or the relationship of private individuals *inter se*. The concept seeks to ensure that all citizens of a

¹ James, R. W. *Nigeria Land Use Act: Policy and Principles* (Ile-Ife: University of Ife Press Ltd, 1982) p. 14

² See subsections (d) and (e) of section 16.

³ Professor Ben Nwabueze is the leading constitutional lawyer in Nigeria, if not in the whole of Africa. He was the Chairman of the Sub-Committee on Fundamental Objectives and Directive Principles of State Policy of the Committee that drafted the 1979 Constitution.

⁴ Nwabuze, B. “The Value of Human Rights and their Challenge for Africa” paper delivered at the Annual Conference of the Nigerian Bar Association at Abuja, held on 27th August, 1998 p. 38.

state are treated equally by the state.¹ It implies, among other things, equal treatment of citizens in the exercise of legislative, judicial and executive powers.

Equality of rights and obligations is however not absolute as there may be justifiable grounds for discrimination. What is prohibited is discrimination not based on rational grounds.² The right guaranteed in Article 3 of the African Charter is similar to the right to freedom from discrimination guaranteed in the international bill of rights and under section 42 of the 1999 Constitution. However, unlike the right to equality before the law and equal protection of the law, the prohibited grounds of discrimination is normally stated as part of the guarantee of right to freedom from discrimination. The right of equality before the law was in issue in the South African case of *Nonkululeko Letta Bhe & Ors v Magistrate, Khayelitsha*.³ The Constitutional Court of South Africa held in that case that the primogeniture rule as applied to the customary law of succession cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Rights. As the centerpiece of the customary law system of succession, the rule violates the equality rights of women and is an affront to their dignity.

4. The Land Use Act and Women's Access to Land

A major legislation that generally represents Nigeria's land policy is the Land Use Act of 1978, which, among other things, empowers a Governor and a Local Government Chairman to grant statutory and customary rights of occupancy, respectively. The Land Use Act sets out a framework for a national land policy for Nigeria. It took away radical title over land from communities and individuals and vested same on the State and Local Governments as trustees.⁴ Since the inception of the Land Use Act, what the individual retained or can obtain is either customary or statutory right of occupancy. Statutory right of occupancy may be granted by the Governor pursuant to section 5(1)(a) of the Act, or it may be deemed granted by the Governor pursuant to section 34(2). Section 5(1)(a) of the Act empowers the Governor of a State to grant statutory right of occupancy to any person in respect of land whether or not in an urban area.

Since the Land Use Act is subject to the Constitution⁵, the governor or local government chairman in exercising his powers under the Act cannot do so in a manner that will be violate the provisions of the Constitution especially the constitutional bill of rights. The Supreme Court held in *Adole v Gwar*⁶ that no provision of the Land Use Act can override the provisions of sections 43 and 44 of the 1999 Constitution. In the words of the Supreme Court,

The relevant provisions under the 1999 constitution are sections 43 and 44 Under the present democratic dispensation, no provision of the Act can override the provisions of sections 43 and 44 of 1999 constitution. Indeed if any of the provisions of the Act stands inconsistent with those of the constitution, to the extent of the inconsistency, they are null and void and of no effect.

Another implication of the supremacy of the Constitution over the Land Use Act is that the doctrine of affirmative action cannot be relied on to redistribute land already owned by individuals in view of the constitutional guarantee of right not to be expropriated of property. In any case, the doctrine of affirmative action can be relied upon in respect of future grants of public lands to private individuals.

The Land Use Act provides for compulsory acquisition of land for overriding public interest upon prompt payment of compensation. Compulsory acquisition of land for overriding public interest was validated by the Supreme Court in *Provost, Lagos State College of Education & Ors v. Dr. Kolawole Edun & Ors*⁷ where it held that section 25 of the Public Lands Acquisition (Amendment) Edict, 1976 which provides for compulsory acquisition of property upon prompt payment of compensation did not go contrary to the 1979 Constitution.⁸ However, where land is acquired for public purpose, the same land cannot be granted to a private individual. In

¹ Nwabueze, B. O. *Equality before the Law* in Ajomoh, M. A. (ed.) *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advance Legal Studies, 1989) p.39.

² See Ogbu, O. N. *op. cit.* p.

³ (2006) C.H.R. 31

⁴ See Smith, I. O. *Practical Approach to Law of Real Property in Nigeria* (Lagos: ECOWATCH Publications (Nigeria) Ltd, 1999) p. 305.

⁵ In *Nkwocha v Governor of Anambra State* (1984) 1 SCNLR 634 the Supreme Court of Nigeria settled the question of the relationship of the Land Use Act with the Constitution. It held that the Land Use Act is an existing law subject to the power of the court to declare any provision of the Act invalid for inconsistency with the Constitution. The Supreme Court reiterated the position in *Adisa v Oyiwola* (2000) 10 NWLR (pt. 674) 116 by holding that despite the fact that the Land Use Act is by section 274(5) of the 1979 Constitution incorporated into or entrenched in the Constitution, it is not an integral part of the Constitution, and therefore any of its provisions which is inconsistent with the Constitution is to that extent null and void.

⁶ (2008) 11 N.W.L.R. (pt. 1099) 562

⁷ [2004] 6 NWLR (pt. 870) p. 476

⁸ At 506-507.

*Ononuju v A.G.*¹ it was held that no one, including the government, can deprive a holder or occupier of his land unless the land is acquired compulsorily in accordance with the provisions of the Land Use Act; for example; for overriding public interest or for public purpose by the Local Government or the State Government. In *Mohammed v. Farmers Supply Co. (Kds) Ltd*² it was held that revocation or cancellation of a citizen's right of occupancy over a property amounts to compulsory acquisition of the said property and that such compulsorily acquired property cannot be granted to a commercial company or another individual. In the circumstance, the power of acquisition of land by a Governor or Local Government Chairman is fettered and cannot be applied to redistribute land owned by private individuals. Similarly, in *Olohunde v. Adeyoju*³ the Supreme Court maintained that the powers of the Governor to control and manage land in a state and to grant statutory right of occupancy cannot be applied to defeat vested rights.

One of the obvious shortcomings of the Land Use Act is its failure to define how governors should exercise their power under the Act. James pertinently observed that at times the power is exercised for improper or political motives and at other times arbitrarily.⁴ The stark reality is that women are marginalized in the political life and decision-making processes and structures of the nation.⁵ They are not adequately represented in the three arms of government.⁶ There is still a very low level of women participation in politics in Nigeria.⁷ This negatively affects their chances of being allocated state land. Furthermore, the Land Use Act failed to limit the number or size of lands that could be acquired or owned by an individual. The former military administration in Lagos State sought to achieve the objective of limiting the number of plots a person could own in certain parts of Lagos. However, the legislation was the subject of litigation in *A.G. of Lagos State v Dosunmu*.⁸ In that case, the Military Government in July 1975 evolved a land policy that no person should own more than one plot of state land at Victoria Island and not more than two at South-West Ikoyi. Pursuant to the above land policy, the Military Governor of Lagos State enacted the Determination of Interest in Land Edict No. 3 of 1976 and the Determination of Interest in State Lands Order No. LSLN No. 9 of 1976. The interest of the plaintiff/respondent in his second plot of land at Victoria Island was determined by the Order. The plaintiff in his pleadings averred that the 1976 Edict and Order are both unconstitutional, null and void for being in breach of section 22 of the 1963 constitution. The case was, however, not determined on the merit as it was struck out for want of jurisdiction. The Supreme Court held that by section 6(6)(d) of the 1979 constitution courts lack jurisdiction to entertain any suit that challenges the competence of any Military Government to make any Decree or Edict between 15th January, 1966 and 1st October, 1979.

It is against the background of inequitable distribution of land in Nigeria to the disadvantage of women that the National Gender Policy (Situation Analysis and Framework) advocated the review and engendering of the Land Use Act so that women can have access to land as critical resource in agric-business as one of the implementation strategies of the objective of building institutions to promote the activities of women in the agricultural sector.⁹ Nigeria at present lacks a coherent and well developed land policy. Land policy which remains a desideratum in Nigeria is a prerequisite for economic growth and sustainable human development.¹⁰

5. Conclusion

It is now agreed that equality in the status of men and women is a fundamental right which is also fundamental to the sustainable development of every society. This equality includes equal opportunity to access public resources, including land. The Importance of land reforms for creating an egalitarian and democratic climate is obvious. Distribution of land is a major determinant of the distribution of income and the incident of poverty.

The 1999 Constitution of Nigeria expresses egalitarian principles under the fundamental objectives and directive principles of state policy in chapter II of the Constitution, which if implemented will significantly

¹ [2009] 10 NWLR (pt. 1148) 182.

² [2019] 17 NWLR (pt. 1701) 187 S.C.

³ [2000] 10 NWLR (pt. 676) 562.

⁴ James, R.W. *op. cit.* p

⁵ Paragraph 15.1.1. of the National Policy on Women reads as follows: "Women's numerical strength in the population is not reflected in the political life and decision-making processes and structures of the nation. They are inadequately represented at the National and State legislative houses. At the Local Government Councils, women are either completely absent or grossly under- represented. The position is the same at the executive levels in the country. There is the need to correct the situation to ensure the full realization of women's rights.

⁶ Recently, the National Assembly rejected the Gender Equality Bill through which women demanded for equality in leadership and employment. See Lawal, I. *et. al.* "Women seek end to discrimination, demand gender equality in leadership, employment" *The Guardian* March 8, 2022 p. 2.

⁷ See Ngozi Uti *et. al.* *Gender Dynamics in Nigerian Politics: A Report of Gender Observation in 2007 General Election in North-West Geo-Political Zone of Nigeria* (Abuja: Centre for Women Studies, 2008) p. 99, which shows that there was very low level of success by women in the 2007 general elections. See p. 99

⁸ (1981)1 TWLR p. 2

⁹ See National Gender Policy Situation Analysis and Framework Vol. 1, Federal Ministry of Women Affairs and Child Development p. 70.

¹⁰ See the Framework and Guidelines on Land Policy in Africa .p. 23. It defines land policy as the set of principles to govern ownership (or access to), use and management of land resources to enhance their productivity and contribution to social, economic, political and environmental development and poverty reduction (p.xiii).

address inequitable ownership of resources in the country, and improve women's access to land. However, the fundamental objectives and directive principles of state policy are not justiciable.

In the justiciable fundamental rights provisions of the Constitution, rights or interests in land already acquired are protected, but the Constitution does not expressly deal with the issue of equitable access to land by all Nigerians, including women. The constitutional provision against discrimination on ground of sex does not address the question of past injustice against women in the area of access to land. The section, however, protects present and future inheritance rights of women.

On the other hand, the right not to be expropriated of property guaranteed under section 44 of the Constitution and the right to acquire and own immovable property in any part of Nigeria guaranteed under section 43 of the constitution stand against redistribution of land in favour of women to redress past inequities. To achieve equitable redistribution of land, the two sections of the Constitution ought to be amended to provide for equitable distribution or redistribution of land to redress past injustice in respect of access to land.

The provision of the African Charter on Human and People's Rights for equal access to public property have not been exploited to ensure equitable distribution of land in Nigeria. There is therefore need for the sensitization of the public to the efficacy of this right.

The Land Use Act which sought to provide a framework for land management in Nigeria does not address the issue of equitable distribution of land. While the Act provides for revocation of right of occupancy for overriding public interest, which includes public purpose, overriding public interest or public purpose are not defined to include redistribution of individually owned land. The Supreme Court of Nigeria has also held that where privately owned land is acquired for overriding public interest or public purpose, such land cannot be reallocated to private individuals. Furthermore, it is imperative to reform the Land Use Act to regulate the exercise of the power of the Governor or Local Government to manage public land and to ensure equitable distribution of land.¹ In addition, it is important to set a ceiling on the maximum number or size of landholding by any person and to distribute any excess held by any person among those who are landless or who do not have sufficient land.

There should be vigorous implementation of the programme for gender equality in Nigeria to empower women through the redistribution of land.² To this effect, it is important that gender is mainstreamed into Nigeria's land policy and constitutional rights.³ Generally, there is need for the reform of Nigerian land law in order that land law will effectively perform its social justice function.⁴ It is recommended that both the Constitution and the Land Use Act should be amended to limit the number of plots of land which an individual should own or to specifically guarantee access to land by women or to redress the inequitable distribution of land in Nigeria. However, the any amendment should be preceded by a consciously articulated and well developed land policy.

¹ In 2009, the President of the Federal Republic of Nigeria sought to amend fourteen sections of the Land Use Act. However, the proposed amendments were technical. Eventually, the proposal was abandoned. See Daniel A. "Land Use Act: President seeks Fourteen Amendments" *The Guardian* March 8, 2009 pp. 1, 2 and 4.

² Kly, Y. N. *ibid* p. 125

³ According to the International Labour Organisation (ILO), mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres, so that women and men benefit equally, and inequality is not perpetuated. Similarly, to the European Institute for Gender Equality, gender mainstreaming involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination. See <https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>, last visited on (May 5, 2022).

⁴ For a proposal for the reform of the Nigerian land law, see Nwabueze, B. O. *op. cit.* p. 619. The proposal for reform follows his criticism of the Nigeria land law. It must be noted, however, that Professor Nwabueze wrote before the promulgation of the Nigerian Land Use Act 1978. Therefore his proposals did not take into account the provisions of the Act.

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