

An assessment of land acquisition in Nigeria

Olawale OJIKUTU, Nigeria; Rohan BENNETT, Liza GROENENDIJK; The Netherlands

Key words: land administration, land acquisition, land governance, land grabbing

SUMMARY

There is growing agreement that large-scale land acquisitions, and land acquisition in general, require better governance. This paper aims to provide input on this front. It works from the premise that evidence-based assessment is needed. An empirical evaluation of the existing situation is undertaken. Nigeria acts as the case study: the country's national land use policy is used as the primary source for assessment. It is tested using a *novel, but scaled down, application* of the World Bank's Land Governance Assessment Framework (LGAF). It should be noted that new LGAF module (16 indicators) on large-scale land acquisition was not available at the time the research was undertaken. A range of source materials including media reports, an expert questionnaire, and aerial imagery supported the study. Overall, the results showed Nigeria fulfilled only ten (10) of the forty-four (44) dimensions examined (23%). However, the value of examining LGAF in a quantitative fashion can be (and is) questioned. At a more descriptive level, Nigeria was found to adhere to dimensions relating to recognition of western style land rights, restrictions, and basic compensation. However, areas for policy upgrade were identified as: enforcement of existing rights; flexible methods for recognizing and registering rights (especially in rural areas); cost effective survey mechanisms, better definition of land agency responsibilities; more equity and transparency in decision making; improving public land management; enhancing expropriation procedures; better land information collection and provision; and improved dispute resolution processes. The LGAF was found to be a useful diagnostic tool, however, its application in this work (i.e. desktop research and use of quantitative results) strays significantly from the World Bank's suggested use and application: the required timeframe and resources for full implementation were unavailable. As such, the approach requires further validation. The authors wish to note that this work is a highly summarized version of a paper submitted to an academic journal.

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1. INTRODUCTION

The acquisition of vast tracts of land from developing countries by wealthier food-insecure nations and private investors became a widespread phenomenon after 2007. The nature of these acquisitions led to widespread debate (c.f. Von Braun *et al*, 2009; Cotula *et al*, 2009; Zoomers, 2010; De Schutter, 2011). The desirability of these large-scale international land acquisitions remains contentious. Empirical studies on large-scale land acquisitions are only now emerging: the newness of the phenomenon and the secrecy surrounding acquisition deals (Hallam and Cuffaro, 2011) makes such evaluations difficult.

The research underpinning this paper aimed to contribute in this area. It aimed to further evaluate land acquisition processes (both in general, and specifically in relation to large-scale acquisition) against the principles of good land governance. Land governance is a broad term, however, in the context of this paper it is considered the policies, processes and institution by which land, property and natural resources are managed (FIG, 2009). The work is considered a preliminary diagnostic step prior to undertaking more detailed work. The rest of the paper has the following structure: the overarching research methodology is described; the nature and adapted application of the World Bank's Land Governance Assessment Framework (LGAF) is discussed and justified (Deininger *et al*, 2011); the use of Nigeria as a case study jurisdiction is also justified; key results are then presented. The conclusion summarizes the paper and articulates areas of future research.

2. METHODOLOGY

The research design consisted of five stages: conceptualization, two literature reviews, the evaluation, a further validation, and a final synthesis. It should be noted that the research was largely 'desktop' in nature: the limitations of this approach should be taken into account when analysing results. However, it should also be noted that the research team had considerable practical experience in relation to the Nigeria: the selected case study country. *Conceptualization* involved recognition of the gap between land acquisition processes and land governance, whilst the *review* stage included two literature reviews on the topics: these informed the selection of methods and case study jurisdiction. The results from the review stage are not included in this paper.

The *evaluation* (Walliman, 2001) utilized the World Bank's LGAF (Deininger, 2011) as the tool for assessing land acquisition processes. It should be noted that new LGAF module (16 indicators) on large-scale land acquisition, piloted on Ghana (Deininger, 2011), were not available at the time the research was undertaken. At any rate, only indicators directly related

to land acquisition were examined in the evaluation. LGAF is made up of 5 thematic areas. The thematic areas used were: (1) legal and institutional framework, (3) public land management, (4) public provision of land information, and (5) dispute resolution. Within these themes, ten (10) out of the twenty-one (21) indicators and forty-four (44) out of the eighty (80) dimensions were evaluated. It must be stated that the use of LGAF in this study differed significantly from that proposed by the framework's designers: multiple participatory group sessions were not undertaken; selection of a 'best-fit' dimension for each indicator was not undertaken; and each dimension was assessed individually in a binary fashion (yes/no). Whilst this approach tends to go against the intended application of LGAF, resource limitations (time, finance, participants, and data) induced it: assessment of individual dimensions as yes/no was deemed more feasible and less subject to error than subjective selection of one non-ordinal LGAF dimension for each indicator. Nigeria was selected as the case study country: whilst not the most prominent country in terms of large-scale land acquisition deals, data was accessible and it was familiar to the research team.

The *validation* stage aimed to substantiate the results from the evaluation. LGAF was again used as the assessment tool, however, a range of other data sources were used in the study. These included: an online survey of Nigerian land administrators and citizens; an analyses of contemporary media regarding land acquisitions in Nigeria; a systematic study of journal papers focused on land acquisition in Nigeria; and a small study of satellite imagery in places where land acquisition has taken place.

The final *synthesis* holistically reconsidered the results from the review, evaluation, and validation stages: areas of strength, weakness, opportunity, and threat were identified, with respect to large-scale land acquisition in Nigeria. Attempts were also made to identify generic improvements with respect to land acquisition processes in all countries; however, the single case study limits the validity of such generalizations.

3. RESULTS

3.1 Overarching Results

The synthesized results from the evaluation and validation stages are provided in Table 1. As already discussed, to should be noted that quantitative descriptions of results (i.e. an overall score) are not the intended outcome of LGAF (c.f. Deininger et al, 2011). The approach is only used here due to resource limitations and to assist synthesis and efficient discussion of results. Sections 3.2 – 3.5 inclusive, undertake these discussions- these descriptions are more inline with the LGAF's intended use as a tool for policy development.

In Table 1, the indicators and associated number of dimensions are listed. Indicator 14 and 15, and 16 and 19, are combined in the presented results: the content of each was deemed similar. The numbers in the columns represent summarized outcomes from the evaluation and subsequent validation. For example, if the assessment of the policy document was shown to adhere to a dimension, and the validation stage (e.g. questionnaire results or media analysis results) supported the adherence, the dimension was considered to adhere. Similarly, if

evaluation and validation stages both suggested non-adherence, the overall result was non-adherence. However, if significant differences between the evaluation and validation stages were evident (e.g. journal papers, media, and questionnaire suggested non adherence, whilst policy document suggested adherence) the dimension was recorded as uncertain or unsure.

Table 1. Summary adherence to selected LGAF indicators by Nigeria

	Land Governance Indicators	Dimensions	Adherence	Unsure	Non-Adherence
1	Recognition of continuum of rights (LGI 1)	5	3	2	-
2	Enforcement of rights (LGI 2)	4	1	-	3
3	Mechanism for recognition (LGI 3)	4	-	3	1
4	Restriction of rights (LGI 4)	4	4	-	-
5	Clarity of Mandate and practice (LGI 5)	3	-	-	3
6	Equity and non-discrimination in decision making process (LGI 6)	3	-	1	2
7	Identification of public land and clear management (LGI 12)	5	-	2	3
8	Transparency and fairness of expropriation procedure (LGI 14 & 15)	6	1	3	2
9	Completeness of land information (LGI 16&19)	5	-	-	5
10	Assignment of responsibilities (LGI 20)	5	1	-	4
	Total	44	10	11	23

3.2 Thematic Area 1: Legal and Institutional Framework

3.2.1 Recognition and Enforcement

In Nigerian land use law (enacted 1978), there is all-embracing recognition of property rights for the most pertinent tenure typologies. This includes individuals and group rights in both urban and rural areas. However, it does not recognise squatters or informal settlers in urban areas. There is provision for extensive grazing systems. In the mechanism for recognition of rights, the law accepts non-documentary evidence to acknowledge rights based on local practice, although this is limited to pieces of land in the rural areas. The registration system does not discriminate rightful landholders by gender. However, the law seems to be deficient in establishing boundaries of lands. There has been no survey or registration of communal land areas, and there is no provision making it mandatory for government to do so. Moreover, the law is silent on the possibility of recognising long term unchallenged possession of land both in rural and urban areas. Reports, both from the media and the responses received from the questionnaire suggest that registration of rights in land and property is not affordable and not without informal fees. One respondent commented:

“The law recognises customary land holding. In reality, when government want to take over land for public purpose, owners of land subject to customary rights are required to provide evidence of title before they can be compensated. Their inability to provide such proof has often provided a basis for dispossessing them of their lands.”

This comment suggests that implementation is at variance with the provisions of the law: customary rights holders appear highly exposed to land acquisition processes.

3.2.2 Restriction on Rights

The current land policy places some restriction on both urban and rural land ownership and transferability. Such restrictions could be found in section 34 subsections (5b), which extinguishes all rights of land in excess of half of one hectare in urban areas to government. Also, section 21 makes it unlawful for any right holder either in urban or rural areas to transfer property without the consent of the governor. If a titleholder desires to do any transaction on the land, he will be required to obtain the consent of the Governor for the transaction. This, in effect annuls the presumptions of freeholder rights. The cost of obtaining such consent, according to media reports supported by the World Bank report, is enormous and very untimely. One of the respondents commented that processes are cumbersome, and costly. A number of local articles and journals indicate that there is considerable ignorance of land law and procedures relating to land ownership particularly in the rural areas. Again, this demonstrates the vulnerability of these areas to large-scale land acquisitions.

3.2.3 Clarity of Institutional Mandate

It was found from the evaluation that institutional mandates on land administration in Nigeria are not clearly defined. With the exception of the role of Land Use and Allocation Committees well stated, all other mandated responsibilities of various authorities that are supposed to deal with land administration issues are not defined. There is also no provision in the existing law that makes it compulsory for either government or individual landowners to register all rights in land. Reviews of related articles and journals indicate there are overlapping powers from various government land agencies. These agencies collect information but with little information sharing. From the study, it was unclear what impact these ill defined relationships had on large-scale land acquisitions.

3.2.4 Equity and Non-discrimination in Decision Making Process

The evaluation indicated that Nigerian land policy neither has provision for consultation or seeking consent of people who are likely to be affected by large-scale land acquisition nor incorporating their views in any land related matters. Citizens with long standing occupation on use rights are neither recognised nor secured by the law. The policy also seems to be weak in addressing the rights of citizens who do not own land, that is, those people lower down on the continuum of land rights.

3.3 Thematic Area 3: Management of Public Land

According to LGAF, state ownership of land might be necessitated by provision of public goods and services. In Nigeria, the law provides for Governors to revoke rights of occupancy for overriding public interests. Overriding public interests include: mining; extraction of building materials; and construction of public buildings such as schools, hospitals, and so on. The current policy does not seem to incorporate provisions that give weight to public consultation. Numerous articles, journals, and media reports concluded that the citizens are usually not involved in preparation of planning schemes.

3.3.1 Identification of Public Land and Clear Management

Acquisition of land for public use can be done by the state or by a local government. In either case it must be for public purposes within the state, or a requirement of the government of the federation for public purposes. From the evaluation it was found the law did not make any provision for justifying any land acquired, or to be acquired. The law is also silent on the modality of managing public lands. There is no clear provision of the law mandating government agencies to manage and to take inventory of state owned land, thus the country seems to be far from reaching the goal of a complete inventory of property. Another area where the Nigerian land law is silent is on information regarding land concession. There is no provision in the law making public disclosure of information mandatory.

3.3.2 Transparency and Fairness of Expropriation Procedure

According to the Nigerian land policy, expropriation is warranted only for public benefit. But there is growing outcry in the press that existing land owners are being pushed out to pave way for new private owners. However, there is provision for compensation for property owners in cases of expropriation. Notwithstanding, 74% of questionnaire respondents confirmed that compensation is inadequate. With the current policy, only those who have formal legal rights to land or claim to such legal rights are allowed compensation for loss of land taken. The maximum compensation payable on bare land is an amount equal to the ground rent, if paid by the owner during the year in which the right of occupancy was revoked. The compensation also covers buildings or improvements, thereon, installation, and on crops. It is important to mention that the law only applies to those who have ownership rights, excluding people with user rights, tenants, and those who are directly or indirectly subjected to restriction on their access to resources.

The valuation for building or improvement is clear from the point of view of the land law. It is the replacement cost of building, less depreciation. Meanwhile the computation of compensation for crops is left at the discretion of the government officials. Section 33 of the law empowers the Governor or the Local Government to use their discretion to offer in lieu of compensation, resettlement in any other place to affected persons.

3.4 Thematic Area 4: Public Provision of Land Information

The evaluation revealed that there are no provisions in the current Nigerian land law that make it mandatory for government or individuals to register all privately owned land including encumbrances in the land registry. Property registration is voluntary: a property owner may decide not to register or update his record. The policy document did not readily adhere to any of the five dimensions under this land governance indicator. Additionally, 53% of respondents to the question confirmed that property rights information is not accessible to the public. Also, 54.5% of respondents indicated that information on expropriated lands is not accessible to the public. There are indications that a clear schedule on fees for different services is publicly available, but some informal payment still exists. As such, there appears to be an underlying sense that current systems are focused on the requirements of government, and the generality of the public.

3.5 Thematic Area 5: Dispute Resolution

The evaluation indicated that there is provision for dispute resolution in the Nigerian land law. Section 2, sub-section 2(c) says: There shall be established in each state a body to be known as “the Land Use and Allocation Committee” which shall have responsibility for determining dispute as the amount of compensation payable under this Act for improvement on land among others. The limitation here is that the body cannot entertain any other issue on land expropriation other than compensation payable on *improvements on land*. Other issues like land value, delay compensation, severance, disturbance, and injurious affection are excluded from the jurisdiction of the body. However, there is no provision for informal judiciary decisions or alternative dispute resolution (ADR). Interestingly, section 47(2) of Nigerian land law prohibits the courts from having jurisdiction to inquire into the amount, or adequacy, of any compensation paid under the Act. Questionnaire respondents confirmed that even where people wish to seek redress in court as the last resort, the cost involved is unaffordable and very untimely.

4. DISCUSSION

The overall results show that Nigeria has scope for improving land governance. Using the adapted LGAF approach outlined, the policy document fulfilled only sixteen (16) of the forty-four (44) dimensions examined (36%). After validation this was reduced to ten (10 or 23%). As already discussed such quantitative descriptions should be treated with caution, however, the sheer size of the discrepancy suggests there are some differences between the national land policy and its implementation. Moreover, the land policy document itself appears as though could better adhere to principles of good land governance. The result is not entirely surprising: the national land policy was enacted in the 1970s making it much older than any modern land governance assessment framework.

At a more descriptive level, the results suggest that Nigeria adheres to land governance indicators related to recognition of western style land rights, restrictions, and basic compensation. However, with respect to other land governance indicators, there are many potential areas for improvement. These include: enforcement of rights; more flexible methods for recognizing and registering rights (especially in rural areas); cost effective survey mechanisms, better definition of land agency responsibilities; more equity and transparency in decision making; improving public land management; enhancing expropriation procedures; better land information collection and provision; and improved dispute resolution processes.

It is also noted here that many African countries are acknowledging the shortcomings in their land law in protecting the interest of rural majorities (generally customary rights); some are taking steps to strengthen the protection of local land rights. Customary rights are protected to certain degree (Cotula et al, 2011) for instance in the Mali Land Code 2000, Mozambique’s Land Act 1997, and Tanzania’s Land Act and Village Land Act 1999.

With respect to large-scale land acquisition, undertaking these improvements is of great importance: where a recipient country lacks the necessary foundation of good land governance, the negative effects of large scale land acquisition will mostly outweigh any

benefits. As such, it appears a review of national land policy in Nigeria is timely: there are opportunities for better alignment with good land governance principles.

5. CONCLUSION

This paper worked from the premise that evidence-based assessment was needed of land acquisition- specifically from the perspective of good land governance principles. An evaluation was undertaken using Nigeria acts as a case study. The country's national land policy was used as the primary source for assessment. It was tested against the World Bank's Land Governance Assessment Framework (LGAF). For various reasons the application of LGAF diverged from that proposed by the framework's designers. A range of other 'land grabbing' source materials including media reports, an expert questionnaire, and aerial imagery were used for validation. The adapted application of LGAF was found to be useful for diagnosis (even when group participation sessions are unavailable), however, it is recommended that a set of guidelines specific to large-scale land acquisitions be developed. Such guidelines are currently under construction through a process initiated by the World Committee on Food Security (CFS). Additionally, a new LGAF module on large-scale land acquisition was recently piloted in Ghana.

Overall, the results showed Nigeria fulfilled only sixteen (16) of the forty-four (44) dimensions examined (36%). After validation this was reduced to ten (10 or 23%). However, as discussed, such quantitative descriptions needed to be treated with caution. At a more descriptive level, Nigeria was found to adhere to many LGAF criteria relating to recognition of western style land rights, restrictions, and basic compensation. However, areas for potential policy upgrade were identified as: better enforcement of existing rights; more flexible methods for recognizing and registering rights (especially in rural areas); cost effective survey mechanisms, better definition of land agency responsibilities; more equity and transparency in decision making; improving public land management; enhancing expropriation procedures; better land information collection and provision; and improved dispute resolution processes.

ACKNOWLEDGEMENTS

The authors wish to acknowledge that this paper is a greatly abstracted version of a paper submitted to an academic journal. They also wish to acknowledge the support of colleagues at the UNU School for Land Administration Studies, ITC Faculty, University of Twente in the development and review of this work.

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Nigerian Land Use Act 1978 (*Ng*)

Mali Land Code 2000 (*Ml*)

Mozambique Land Act 1997 (*Mz*)

Tanzanian Land Act and Village Act 1999 (*Tz*)

BIOGRAPHICAL NOTES

Olawale Ojikutu has extensive experience as a Land Officer at the Lagos State Government, Nigeria. He is a professional estate surveyor and valuer. Between 2010-2012 he completed a MSc in Geoinformation Science and Earth Observation (Land Administration) with the ITC Faculty at the University of Twente. His research focused on the connection between land acquisition and the principles good land governance. Previously he has undertaken graduate and postgraduate courses at Erasmus University (2007) and Lagos State University (1998-2000).

Rohan Bennett is an Assistant Professor at the UNU School of Land Administration Studies at the University of Twente. He holds Bachelors degrees in Geomatics and Information Systems, and completed his PhD (Land Administration) in 2007 at The University of Melbourne.

Liza Groenendijk is a graduate of Wageningen Research University. She has extensive international experience in tropical forest engineering, social forestry and agro forestry. At ITC her previous roles include: lecturer and director of studies of the Forestry for Rural Development post-graduate course; management and lecturing of the multi-module MSc on Natural Resource Management; and participating in the e-learning project group. Currently she is involved in the MSc and post-graduate courses on Land Administration. She is the portfolio holder Eastern Africa of the UNU School of Land Administration studies. She is in

the process of undertaking and completing a PhD. She is a member of the International Federation of Surveyors (FIG) and she chairs Working Group 2.2. (e-Learning), Commission 2 (Professional Education).

CONTACTS

Mr. Olawale Ojikutu
University of Twente
ITC - UNU School for Land Administration Studies
Enschede 7500 AE
NETHERLANDS
Tel. +31 (0)53 4874 339
Fax + 31 (0)53 4874 575
ojikutu21322@itc.nl

Dr. Rohan Bennett
University of Twente
ITC - UNU School for Land Administration Studies
Enschede 7500 AE
NETHERLANDS
Tel. +31 (0)53 4874 339
Fax + 31 (0)53 4874 575
bennett@itc.nl

Ms. Liza Groenendijk
University of Twente
ITC - UNU School for Land Administration Studies
Enschede 7500 AE
NETHERLANDS
Tel. +31 (0)53 4874 528
Fax + 31 (0)53 4874 575
groenendijk@itc.nl