

ENVIRONMENTAL RIGHTS ACTION/FRIENDS OF THE EARTH NIGERIA

Environmental Rights Action/Friends of the Earth Nigeria is a Nigerian advocacy group dedicated to the non-violent defense of the human ecosystem in terms of human rights. It was founded in January 1993. ERA/FoEN is the Nigerian Chapter of Friends of the Earth International. ERA/FoEN. ERA is the host of Oilwatch Nigeria and also a member of the Network of Accountability of Tobacco (NATT), the Framework Convention Alliance (FCA) and Africa Tobacco Control Regional Initiative (ATCRI).

The Organization's committed struggles for environmental rights has won its recognition through awards such as the SOPHIE PRIZE (1998) for excellence and courage in the struggle for environmental justice, the BLOOMBERG AWARD for Tobacco control activism (2009) and the Ford Foundation Jubilee Transparency Awards (2011).



POLICY BRIEF ON THE MODEL LAND USE BILL 2019

Proposed Bill for the Establishment of Lands Use and Allocation Commission

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This is to acknowledge the relentless support of our allies, communities and partners to ensure that this policy brief for the need for Land Use Act review become a reality. Your contributions to the proposed Model Land Use Management Commission have made this initiative a reality. Thanks to FIAN for the support of this publication. Any error is that of the author and not our allies.



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2019 PROPOSED BILL FOR THE ESTABLISHMENT OF LANDS USE AND ALLOCATION COMMISSION

EXECUTIVE SUMMARY

This policy brief is based on decades of community experience and several studies including the recent one conducted in 2018 on the multifaceted uses of land, the various interests and concerns vis-a-vis the porous land tenure system prevailing in Nigeria by the provisions of the Land Use Act (LUA) of 1978. Persistent negative reviews of LUA show fundamental lapses that allow land acquisition process to be cumbersome, and subject to manipulation and abuse. It is also to the detriment of the impacted communities who depend on forests and its resources for their livelihoods. It has not been able to address the spate of social unrest and environmental degradation from multi-layered uses of land.

The study that informed the policy brief shows the interconnectedness of land to productive uses: food, energy, water, and human rights and social issues. It also shows the increasing concerns on land grabbing with lapses in the land management that have failed to halt the spate of landgrabbing with the involvement of the private and public sectors from within and outside Nigeria.

The impact of land grabbing is only one of the many problems of social and environmental degradation, biodiversity losses and livelihoods that result from deforestation. In terms of land conflicts and conservation of the remaining pristine forests, Cross River State stands out in its effort to make land management and mandatory corporate social responsibility to deliver on dividends of development by investors. While CSR is sidelined or abused, environmental degradation and human rights abuses are increasing on a daily basis. This pressure on land must be checked and properly managed for the benefits of all.

Since the LUA is highly defective a new Model Land Use Bill is proposed to address the lapses identified such as poor administrative system for lands, ownership, and the absence of community participation. MLUB sets out to:

- i. Establish Lands Use and Allocation Commission (LUAC) with community representation in the membership. It will initiate programmes and policies for land allocation/acquisition and promptly determine grievances or disputes arising from land issues;*
- ii. Review the power of the Governor to acquire land for public purposes that should be in conjunction with the recommendations of the Lands Use and Allocation Commission (LUAC) to reduce the risk of misappropriation;*
- iii. Provide for the prohibition/restriction of acquisition of agricultural land by foreigners to check the incidence of land grabbing and communities' dispossession and displacement from their farmlands by establishing a framework of land acquisition for agricultural lands by the private and public sectors;*
- iv. Provide for human rights protection, and access to justice including freedom of information, and freedom of information should be part of the land use management systems to allow citizens participation and protection of community land rights.*

It is our modest contribution and we hope that policy makers will take advantage of this policy brief promoting a new land management structure for ease of business, improve social and environmental protection and reduce the spate of landgrabbing by dispossession.



1. INTRODUCTION

The conventional narrative on land grabbing by industrialized countries and their activities in Africa, Asia and Latin America underlies fears of global crises on food, fuel, finance, and climate by resource-poor countries. Transnational corporations often supported by their national governments acquire large scale land acquisition often for monocrop plantations such as oil palm, rubber, and coffee. In Nigeria, land grabbing is widespread. The examples of Okomu Oil Palm Plantation Plc and Wilmar PZ in southern Nigeria show that the companies are daily expanding their land intakes for the expansion of their oil palm plantations. This policy brief focuses on land ownership and management or administration for the protection of the environment and rural livelihoods. It is essentially a land reform initiative which is intended to change or restructure relations in so far as land ownership, interests, allocation, alienation, management and administration is concerned.

2. EVIDENCED-BASED RESEARCH AND POLICY INTERSECTIONS

A study on land intersections and policy conducted in 2018 in Cross Rivers state by a 14-member consortium of researchers involving local communities' representatives, academia, lawyers, and environmentalists show that communities' farmlands was severely impacted in several ways (Offiong and Ojo, 2018). Communities' farmlands and crops were destroyed for the expansion of Wilmar's oil palm plantation and without compensation. In some communities, their rivers have been polluted and although water boreholes were provided as a palliative, the quality of the water is poor as it is chalky water from shallow wells.

The study showed the lack of access to justice as a critical challenge facing communities under threats of landgrabbing. Communal land rights have been trampled since there is no free, prior and informed consent (FPIC) in the development process by Wilmar PZ. In a relatively progressive state such as CRS that has provided for Corporate Social Responsibility as mandatory to safeguard community inclusiveness and benefits, companies such as Wilmar flout this provision in several ways. The MoUs signed by the company with governments or communities are ostensibly not available in the communities. In a nutshell, community members have no sense of participation in the drafting of the MoUs hence they are unaware of the contents of such MoUs done in secrecy. Compensation if any is paid arbitrarily without recourse to market value of lands and crops. Some impacted communities and individuals suffer intimidation and threats of arrests when they stand up for their rights.

It should be noted however that land grabs do not necessarily or always involve foreign capital. Land grabs may in fact not be new but is exemplified in successive self-centered military dictatorships supplanted by its civilian counterparts in the wake of the promulgation of the Land Use Act (LUA). This pronounced status has produced a new set of actors, alliances, legitimizations, and mechanisms of dispossession.

¹Maria Angelina M. Uson (2015). Grabbing the 'clean slate' The politics of the intersection of land grabbing, disasters and climate change – insights from a local Philippine community in the aftermath of super typhoon Haiyan, ISS Working Paper No. 603.

²Dr. Edwin Madunagwu was the one who once defined Government as the executive committee of the ruling class.

3. UNDERSTANDING THE INTERCONNECTEDNESS OF LAND AS A NATURAL RESOURCE

A resource is any physical or virtual entity of limited availability, or anything used to help one get a favourable result. Resource such as land has three main characteristics: utility, quantity (often in terms of availability), and use in producing other resources. Land is a very important economic factor of production; to produce food and other primary goods: fiber, timber, and so on. Land holds other resources such as minerals, water and forest.

The research focus helps us to deepen our understanding about the intersections of land and other means of production. In particular, it shows the four interconnections of food security concerns, energy crisis/biofuels, climate change mitigation strategies and finally, industrial demands from newer hubs of global capital such as Brazil, India and South Africa. Our concern here is strictly about land as a natural resource and as a factor of production.

While well-intentioned environmental initiatives such as the transformation of productive lands into protected areas, nature reserves, and ecotourism sites may also engender land grabs it is necessary to adopt community inclusiveness in conservation and land management.

Often, land and its associated resources like water are often revaluated and commoditized with the concomitant non-conventional actors such as corporate entities into agrarian conflicts. With numerous groups like Wilmer and individuals scrambling for limited resources, politics around land often created different trajectories of property rights, values, and relations.

This interconnectedness encapsulates, among other variables, the eviction of rural poor families from their lands or their subjection to unequal contract-farming arrangements and/or labour relations in the capitalist market on their own lands, and in their own countries. Remember occurrences of land dispossession and displacement as in Bakalori (Sokoto State), Maroko (Lagos State), Makilolo and several communities in Edo state by Okomu Oil Palm Plantation and the activities of Wilmer PZ Oil Palm Company operating in Cross River State to mention just a few instances.

Land is relatively immutable and unmovable and it is usually the most acceptable collateral for securing loan, capital or finance. Given that over 70% of the population in Nigeria including CRS depend on land, special consideration should be given to the survival and livelihoods of our rural farmers and fishermen so they do not suffer dispossession and displacement in the face of advancing offshore capital and other interests alien to the state.


Although the Nigerian land law indicates that land transactions should be formal and registered because a proper land title documentation is the best security for investment, however, communal land rights that is often undocumented is also recognized as acceptable practice.

³ Ogbara Nurudeen (2009), Environmental Justice/Human Rights – Sources and Resources, A Presentation at a 4-day Retreat & Training Sessions of the Environmental Rights Action/Friends of the Earth, Nigeria (ERA/FoEN) held on July 14 – 17, 2009 at Ame'na Hotels & Resorts, Oghara, Delta State.

⁴ Borras and Franco 2013:1725 cited in Maria Angelina M. Uson (2015). Grabbing the 'clean slate' The politics of the intersection of land grabbing, disasters and climate change – insights from a local Philippine community in the aftermath of super typhoon Haiyan, ISS Working Paper No. 603..

⁵ Wilmer is a multinational company carrying out its operations in Oil Palm Plantation in Cross River State for nearly one decade now. Some of these plantations were formerly palm estates owned by the Cross River State and they are Calaro Oil Palm Estate, Ibiae Oil Palm Estate, Kwa Falls Oil Palm Estate etc. The tripartite MOUs entered into by the State, Wilmer and the affected communities like Ekong-Anaku, Akwa Ikot, Effanga, Iboko, Umai, Betem, Uwet, Atan Odot etc are not known to these communities who freely gave their land based on overriding public interest through customary land right laws.

⁶ <https://www.propertypro.ng/blog/pros-and-cons-of-the-land-use-act/>



From this perspective policy makers must understand that the land and forests is the life sustaining resource that survival of traditional means of livelihoods depend on. Therefore government will do well to protect community land rights and not leave them to the profit minded companies out to externalize social and environmental costs to their parties in order to maximize profits.

However, the issue of overriding state interest in land allocation means that the government of the day owns land in trust for the people. But examples show that such communal laws safeguarding communal land rights are relegated and the Land Use Act of 1978 is undertaken to dispossess or appropriate land for state or national interests. Once the purpose of land acquisition from the communities ceases to apply, land ought to revert to the communities without involvement of third parties through lease or outright purchase as it is currently the case in most states of the federation.

The research examines the LUA and identified shortcomings and proffers solutions to them. These solutions embody the new Model Land Use Bill that we hope will be a resource for the policy makers and rural communities to safeguard community land rights and the protection of the environment. It shows that land grabbing subverts the sustainable development goals of reducing poverty and ending hunger. It also exacerbates poverty among the rural communities especially in relation to the women and youth population in addition to its negative impact on livelihoods.

4.1. THE LAND USE DECREE/ACT (LUA), 1978

The LUA has been carpeted on many fronts but of interest to us is the fact that the legislation is undoubtedly an instrument of the ruling class and it has ensured the emergence of new actors and alliances, legitimizations, and mechanisms of dispossession that set off a different pace for land grabs. LUA vests all lands in the hands of the Government and does not allow for private ownership of land by individuals or corporation. According to the Act, the Governor of each state has the power to allocate urban lands, and local area councils have the power to allocate rural lands. Individuals and private developers must apply for certificates of occupancy that will allow them to use the land for certain period of time for a fee.


4.2. LUA AND ITS SHORTCOMINGS

The LUA has a number of noticeable drawbacks, among which are the transfer of title and ownership of land from individuals and communities to the Governors who hold the land in trust but many of whom have been known to have abused the power and privileges conferred on them by LUA. *Section 22* thereof provides for the acquisition of Governor's consent before a statutory right of occupancy can be alienated as this is necessary where there is a transfer of title from a vendor to a purchaser.

LUA makes it illegal for indigenes and or communities to allocate land without prior government's approval. It causes a lot of delays and red-tapes in making land accessible to the average Nigerians.

⁷ See Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN), Press Briefing on Community Land Rights in Forested Landscapes with the theme "Abandonment of Communities by Wilmer as It Fails to Honour Memorandum of Understanding" by Dr. Godwin Uyi Ojo, Executive Director, ERA/FoEN, held in KEVES Inn, Calabar, June 14, 2018.

⁸ <https://www.dailytrust.com.ng/daily/index.php/property/57117-constraints-in-land-use-act-identified>



There is no suitable legal framework in place to allow Systematic Land Titling Adjudication and Registration of lands (SAR) as against the age-long Sporadic non-compulsory registration approach which appears to have placed severe handicaps on land use in the country.

Professor Akin L. Mabogunje, Chairman Presidential Technical Committee for Land Reform set up the Federal Government on April 2, 2009 to undertake the reform of the land tenure situation in the country due to the various problems emanating from LUA had opined that LUA which conferred on State Governors the custodian right to issue certificates of occupancy for land holders in their states, unfortunately left out the majority already with possessory rights to their land.

According to the luminous scholar, the LUA:

...was meant to usher in a new land reform in Nigeria, it soon became a clog in the wheel of Development over the years. This was more so because the Military Government which promulgated it also ensured it was embedded in the Constitution of the country. Thus, any attempt to rectify its inadequacies required a constitutional amendment. There were thus many protests both to have the Act expunged from the Constitution and to amend it in very many substantial ways. Therefore, there is need to evolve new systems of land resources...'

Under the Land Use Act, absolute title to land is vested in the Governor who can in turn grant occupational rights to the citizens. Certificate of occupancy issued by the Governor or the Local Government is an inconclusive evidence of title held by the occupier or holder.

Thus, it is:

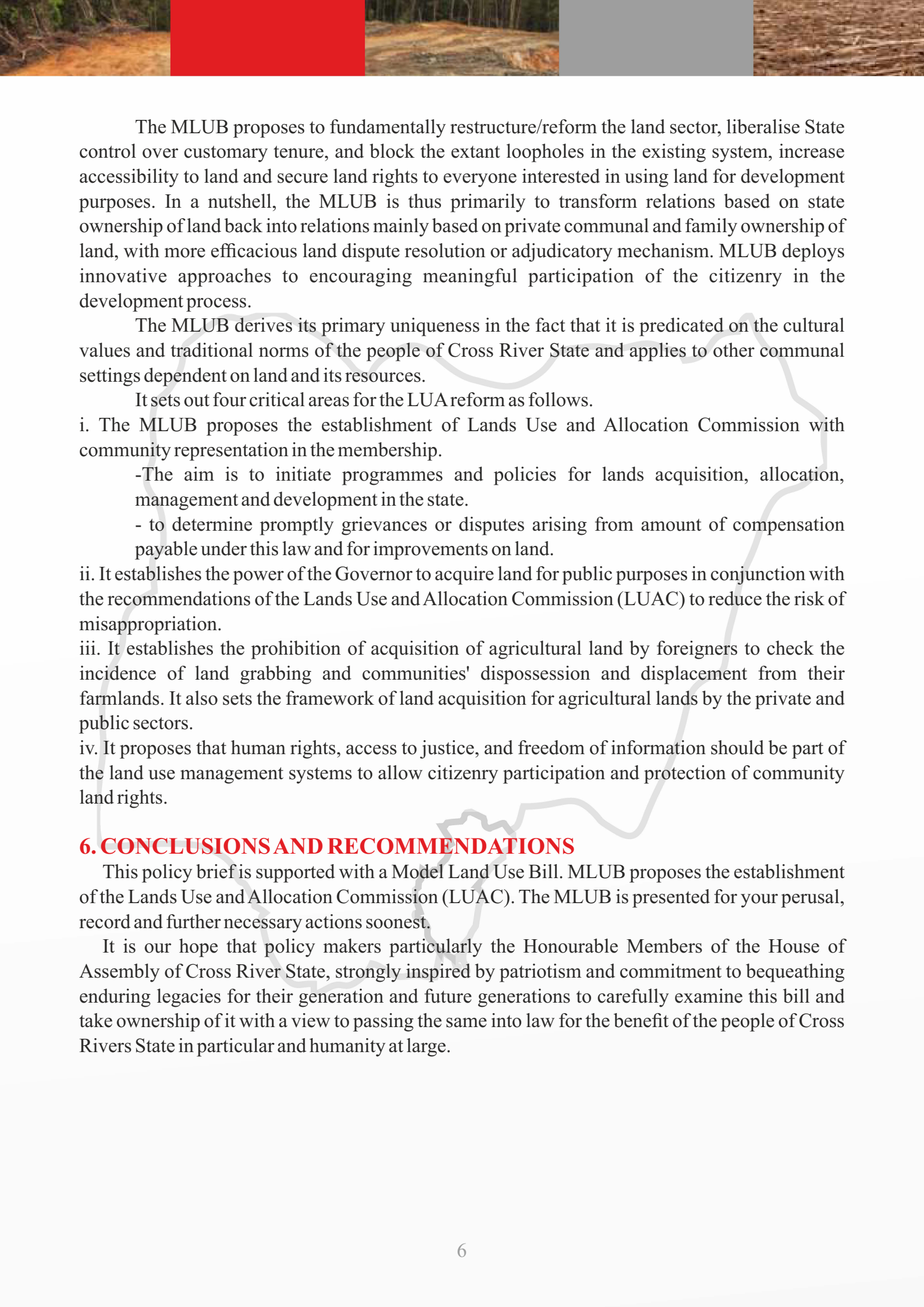
...unthinkable for anyone to see systematic titling and registration as anti-Land Use Act, stating that there is no need to wait for an amendment of the Act before embarking on Systematic land Titling and Registration because Section 48 of the Act already provides sufficient legal basis for it. "The only legislative amendment that will be necessary will be at the individual state level as has been earlier mentioned, and that should not present any difficulty because unlike what it would take to amend the Act at the National Assembly, amendment of a State Law is much faster.

5. THE MODEL LAND USE BILL (MLUB)

The faults identified in the Land Use Act (LUA) coupled with the need for justice and safeguard of livelihoods necessitated the need for a Model Land Law that preserves, projects and protects the customary rights and practices of the people.

⁹ Professor Akin L. Mabogunje, Chairman Presidential Technical Committee for Land Reform
As above.

¹⁰ **Akinyemi Abiodun**, Legal and Regulatory and Operation of Systematic land Titling in Nigeria (Judge of the High Court Abeokuta, ogun state). See also Challenges of Land Use Act or <https://www.dailytrust.com.ng/news/feature/challenges-of-land-use-act/95438.html>



The MLUB proposes to fundamentally restructure/reform the land sector, liberalise State control over customary tenure, and block the extant loopholes in the existing system, increase accessibility to land and secure land rights to everyone interested in using land for development purposes. In a nutshell, the MLUB is thus primarily to transform relations based on state ownership of land back into relations mainly based on private communal and family ownership of land, with more efficacious land dispute resolution or adjudicatory mechanism. MLUB deploys innovative approaches to encouraging meaningful participation of the citizenry in the development process.

The MLUB derives its primary uniqueness in the fact that it is predicated on the cultural values and traditional norms of the people of Cross River State and applies to other communal settings dependent on land and its resources.

It sets out four critical areas for the LUA reform as follows.

- i. The MLUB proposes the establishment of Lands Use and Allocation Commission with community representation in the membership.
 - The aim is to initiate programmes and policies for lands acquisition, allocation, management and development in the state.
 - to determine promptly grievances or disputes arising from amount of compensation payable under this law and for improvements on land.
- ii. It establishes the power of the Governor to acquire land for public purposes in conjunction with the recommendations of the Lands Use and Allocation Commission (LUAC) to reduce the risk of misappropriation.
- iii. It establishes the prohibition of acquisition of agricultural land by foreigners to check the incidence of land grabbing and communities' dispossession and displacement from their farmlands. It also sets the framework of land acquisition for agricultural lands by the private and public sectors.
- iv. It proposes that human rights, access to justice, and freedom of information should be part of the land use management systems to allow citizenry participation and protection of community land rights.

6. CONCLUSIONS AND RECOMMENDATIONS

This policy brief is supported with a Model Land Use Bill. MLUB proposes the establishment of the Lands Use and Allocation Commission (LUAC). The MLUB is presented for your perusal, record and further necessary actions soonest.

It is our hope that policy makers particularly the Honourable Members of the House of Assembly of Cross River State, strongly inspired by patriotism and commitment to bequeathing enduring legacies for their generation and future generations to carefully examine this bill and take ownership of it with a view to passing the same into law for the benefit of the people of Cross Rivers State in particular and humanity at large.

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ACKNOWLEDGMENT

This policy brief by Environmental Rights Action/Friends of the Earth Nigeria is intended to galvanize policy makers into taking action on the long overdue review of the Land Use Act of 1978 for proper land management in Nigeria and with special reference to Cross River State. The proposed Model Land Use Act 2018 and revised 2019 is a product of rigorous research and thanks to everyone who were involved in it. Special thanks to the team of researchers Dr Raphael Offiong, Silvia Nkoyo, Dr Maurice Olory, and other members of the Community Forest Watch in Cross River state for their participation and contributions to the research. Special appreciation is conveyed to all the persons, individuals, groups and traditional rulers engaged in the course of the study, particularly in the three communities from two local government areas of the state selected by their strategic locations and being host to high level economic activities by a transnational company.

Thanks too to Professor Borras, S.M, Institute of Social Studies, Netherlands for invaluable comments on the research report. The support of ERA/FoEN and that of our partner FIAN who supported the research and publications is also appreciated.

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In all, any error, is that of the author and not of the partners and/or supporter.