

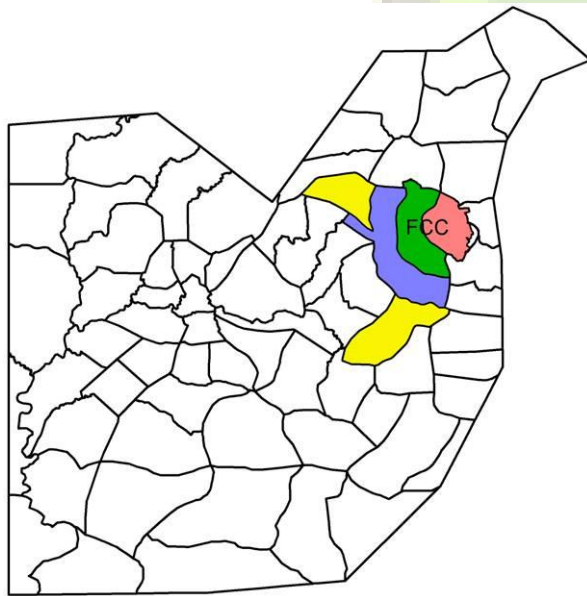
# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

#### Context<sup>1</sup>:

Under the Land Swap Initiative, large hectares of land belonging to 22 (Twenty Two) predominantly poor indigenous villages and communities in the Federal Capital Territory (FCT) have been compulsorily taken away, partitioned and parceled out to 13 (Thirteen) private property developers despite heightened due-process concerns regarding the handling of important issues around land, resettlement, compensation and livelihoods in the community.



Recently introduced by Honourable Bala Mohammed-led Federal Capital Territory Administration (FCTA), the Abuja land swap scheme is garbed with the comforting rhetoric about “delivering decent and affordable mass housing in a well-planned city for all Abuja residents including the original inhabitants of the FCT”. As findings demonstrate, the land swap program so urgently illuminates the need to rethink the normative definition of “public purpose” within the context of an increasing “rush for land”.

Experience (especially drawn from 2003 – 2007 Abuja Master Plan restoration program) has shown that the official rhetoric about urban renewal and mass housing delivery is usually a “rush for land”, and prelude to forced evictions and large-scale displacement of the urban poor.

With the sustained local agitations against the massive land dispossessions, the extent to which the land swap program effectively meets the housing needs of all strata of citizens in the nation’s capital is an important question that must be looked into, as a matter of urgency. And importantly, the synthesis between compulsory land acquisitions driven by public purpose and tenure security must be guided by the overarching concept of the rule of law which finds expression in the non-derogable constitutional and legal guarantees of the fundamental right to property enshrined in Nigerian Constitution, African Charter on Human and Peoples Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>1</sup> Prepared by Victoria Ibezim-Ohaeri, executive director of Spaces for Change  
AGIS Map of Abuja, the Federal Capital Territory, indicating the federal capital city





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

#### The Abuja Land Swap Initiative – The rationale

The Land Swap Initiative (LSI) simply means that developers will be awarded a percentage of large hectares of land for the provision of engineering infrastructure<sup>2</sup>. More specifically, the essence of the LSI is to give an investor a particular percentage of land in a district in exchange for the provision of infrastructure in the earmarked district<sup>3</sup> comprising Kabusa, Waru, Zhindna, PigbaI, PigbaII, TakusharaI, Burum, TakalafiyaI, TakalafiyaII, Chafuyi, Shape, Yimitu, Burum, Gbagyi, Dakibiu, Zokoyakwo, Sheretti, Ketti, Anaknayita, Dnako, Lokogoma, Wumba, and Wasa within the Ketti and Waru community in Abuja Municipal Area Council.

Advancing a rationale for the initiative, official documents state that “Abuja is highly congested, exploding with population activities. If nothing is done, the Abuja Master Plan will be incurably distorted in such a way that in ten years’ time, many people will no longer recognize the once beautiful city<sup>4</sup>”. The staggering influx of people from rural areas and other parts of the country into the 8,000 km<sup>2</sup>-sized city saw the existing infrastructure and housing amenities overstretched far beyond stipulated limits. Aside from the N150 Billion liabilities for resettlement and compensation, the Federal Capital Territory Administration (FCTA) has an existing infrastructure liability of over N420 Billion Naira as of December 2012<sup>5</sup>. Juxtaposing these liabilities against the annual budgetary allocations which usually hover between N33 Billion and N50 Billion Naira, the exploration and adoption of radical solutions to urban agglomeration became necessary.

The LSI is therefore presented as an incentivized solution to the persisting urban challenges, with the primary objective of fast-tracking housing and infrastructural developments in some identified *Greenfield Districts*. In exchange for massive land grants, the land swap model outsources the provision of infrastructure to private developers under a Special Contract “envisaged by the Land Use Act.” Among other things, the developer furnishes the FCTA with a bill of engineering design for the contracted district, detailing the agreed kilometers of storm water drains, foul water drains, water distribution lines, electrical power distribution lines, street lighting lines, telecommunications ducts, and mini-sewage treatment plants. After developing the districts into fully-serviced estates, the private developer-investors can then sell the completed housing units to the public at a profit.

<sup>2</sup> Land Swap Initiative Flyer, produced by the Office of the Honourable Minister of the Federal Capital Territory (FCT) @ page 1

<sup>3</sup> Land Swap Initiative Flyer, ibid at page 1

<sup>4</sup> Land Swap Initiative Flyer ibid

<sup>5</sup> Jamilah Tangaza, The Land Swap Initiative, FCTA Call Center Newsletter Volume 1, Number 4, April 2013





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

#### The legal foundation

Official documents are replete with references to the Land Use Act as the main legal foundation for the LSI. Two provisions so repeatedly invoked are sections 5 and 8 of the Act which empower the Minister to allocate land in the FCT, and to make any grant of land subject to a **Special Contract**. Official statements and records have repeatedly justified the LSI relying on this Special Contract provision. However, the Minister reserves the right to revoke such grant in event of any breach of the Special Contract.

The relationship between the FCTA and the developers is commenced by the latter's payment of a commitment fee of N350,000 Million Naira accompanied by the following documents; a business plan to fund the physical plan; preliminary design, detailed engineering design, survey plan, feasibility studies and the preparation of agreement.

The developer has a 48-month timeframe to provide infrastructure within the district, in strict compliance with the Federal Capital Development Authority's (FCDA's) specifications and standards for district infrastructure works. Real property development, including sale of any land in the district can only occur upon the achievement of at least, 35% of infrastructural works.

Land titles are released to the developer only after he has fulfilled the following conditions<sup>6</sup>:

- 15% of Rights of Occupancy shall be released to the Developer on evidence of transfer of 15% of the infrastructure cost to the project account;
- 80% of the rights of Rights of Occupancy shall be released on the basis of interim measured certificates, the minimum of value of which shall not be less than 20% of the infrastructure works;
- 5% retained till after the retention period of 12 months. The Rights of Occupancy are warehoused in a bank mutually agreed by the parties.

#### The land (private property) developers

The FCTA has executed MoUs with 13 private property developers predicated on a Public Private Partnership (PPP). By this agreement, large hectares of land have been allocated to each of the developer companies for housing development within districts in the FCT outlined below:

---

<sup>6</sup> LAND SWAP INITIATIVE: *Innovative Approach to Housing*; Flyer of the Federal Capital Territory Administration



# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

S/No	Name of Developer	Land Grant Size	Districts
1.	Messrs Afri-International Project Consulting Ltd	301 Hectares	Burum B District
2.	Messrs Rosehill Group	319 Hectares	Waru – Pozema (A) District
3.	Messrs Ridley Group	319 Hectares	Sheretti Cheche (A) District
4.	Messrs Infrastructure Development Company Ltd	182.39 Hectares	Ketti District
5.	Messrs Rosehill Group	357.9 Hectares	Waru – Pozema (A) District
6.	Messrs Ridley Group	368.70 Hectares	Sheretti Cheche (A) District
7.	Messrs Afri – International Project Consulting Ltd	301 Hectares	Burun (B) District
8.	Messrs System Properties Development Consortium Ltd	319 Hectares	Burun District
9.	Messrs AM – PM Global Network Ltd	289.5 Hectares	Burun West (B) District
10.	Messrs Urban Shelter Infrastructure Ltd	204 Hectares	Sheretti Cheche District
11.	Messrs Bolmus Nigeria Ltd	341 Hectares	Burun



*Within the 22 villages that make up the Ketti and Warru districts known as Sector “O” District, Phase IV, in Abuja Municipal Area Council of the FCT, – local discontent continues to surge...From village to village, inhabitants reiterate that the land acquisitions had happened without their consent; without notices of intention to acquire and/or of revocation of our existing customary rights; without any comprehensive plan for resettlement and /or integration of the affected communities; without provision for payment of adequate compensation; without provision for alternative farmlands; and in total disregard of the constitutionally-guaranteed right to fair hearing.*

The MOU is an exclusive contractual agreement between the city planning authorities (FCTA) and the developers. No compensation or provision of alternative farmlands to indigenous land owners of the affected districts preceded the execution of the MOU. Even though the landowning rural dwellers are still in occupation of those districts, the title to their ancestral lands and farmlands have been transferred to the private developers. Among the indigenous ethnic groups of Abuja, the Gbayi is the predominant ethnic group in the Territory, well known for their farming activities. Landowners are now left with the option to either relinquish their only asset and means of livelihood, or face impending evictions by city planning authorities.

### **Mounting fear, tension cross Abuja communities**

Palpable fear and tension pervades the villages affected by the land swap scheme. This fear is well founded: development projects of this nature are often preludes to forced evictions and large-scale displacement of indigenous communities. Beginning from 1999, the FCDA under the then leadership of Mallam Nasir El Rufai was resolute to restore the original Abuja master plan as part of a broader strategy to correct the distortions in the city’s built environment. The desire to follow the master plan gained irresistible momentum between 2003 and 2007 as land values exploded and policies were introduced to push poor residents and indigenous communities to the city outskirts. The rigid implementation of the Abuja Master Plan occasioned large-scale forced evictions that resulted in the displacement of hundreds of thousands of families, loss of livelihoods, abrupt disruption of children’s education, loss of lives and properties, and gross violations of other interconnected human rights.

Nigeria’s history of compulsory acquisition of lands by the government through forced eviction of the people, further fortified the concern that thousands of people would be removed from their ancestral homes without recourse to due process of law. Within the 22 villages that make up the Ketti and Warru districts—known as Sector “O” District, Phase IV - in Abuja Municipal Area Council of the FCT, local discontent continues to surge as there is a strong likelihood that the current land swap initiative will follow a path reminiscent of the 2003 – 2007 large-scale forced evictions in the FCT, which attracted global condemnation and outrage. From village to village, inhabitants reiterate that the land acquisitions had happened without their consent; without notices of intention to acquire and/or of revocation of our existing customary rights; without any comprehensive plan for resettlement and /or integration of the affected communities; without provision for payment of adequate compensation; without provision for





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

alternative farmlands; and in total disregard of the constitutionally-guaranteed right to fair hearing<sup>7</sup>.

Despite assurances by the Minister of the Federal Capital Territory, Senator Bala A. Mohammed that affected communities would be carried along in the implementation of the programme, recent events show that the FCTA has no interest and will to engage the local people and communities in fulfillment of that promise. For instance, it was not until after the FCTA had executed MOUs with private developers, and distributed partitioned communal lands among the contracted investors that it then announced to communities of its intention to carry out survey work and to subsequently commence enumeration of, and valuation of crops and economic trees within Ketti and Waru Districts<sup>8</sup>.

Later efforts to engage inhabitants of the already-distributed districts apparently fall short of stipulated legal rules and due process procedures pertaining to land takings by the government. Legal requirements of consultation with affected land owners, delivery of adequate notices and other conditions for land revocation laid out in the Land Use Act<sup>9</sup> have not been complied with. Queries raised by community representatives regarding the nature, character and modalities for transferring the allocated lands to foreign investors have been ignored and remain unanswered. At an April 26, 2013 town hall meeting involving predominantly Hausa-speaking FCDA officials and the community representatives, the president of the Original Inhabitants Development Association of Abuja<sup>10</sup> demanded an explanation of the land swap scheme in Hausa so that majority of the locals in attendance would fully understand the nature of the scheme. FCDA officials declined that request. Likewise, the FCDA has not responded to similar demands contained in petitions, position papers<sup>11</sup> and press statements issued by the local youth wing, Ketti District Community Youth Forum.

Rather than provide relevant information on the precise nature, scope and content of the project and establish processes for effective consultations and participation of the affected

<sup>7</sup> Spaces for Change meeting with the Ketti/Warru Community Youth Forum| May 1, 2013

<sup>8</sup> “Notification For Assessment of Crops/ Economic Trees For Compensation At Sector ‘O’ Districts Phase IV”, written by the Resettlement and Compensation Department of the FCDA to Districts Heads of Waru, Ketti and the Village Heads of Ketti and Sheretti as well as being copied to some of the corporate bodies and the village head of Burun dated 21/12/12; 22/1/13 and 28/1/13

<sup>9</sup> Sections 28(6) & (7);44 of the Land Use Act

<sup>10</sup> Pastor Danladi Jaji

<sup>11</sup> OIDA Paper presentation of the Ketti/Warru District Youth Forum on Re: Land Swap Infrastructural Development Policy of Senator Mohammed Bala’s FCT Administration at the public hearing organized by the Original Inhabitants Development Association (OIDA) on March 9, 2013 at Bultom White Hotel, Abuja, FCT



# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

communities, the FCDA resorted to using force to suppress local agitations. The arrest and unlawful detention of four local youths<sup>12</sup> involved in the organization of the Cultural Heritage Day is quite illustrative. The cultural event had presented an opportunity to mobilize and sensitize local youths and inhabitants on the implications on the LSI on their collective wellbeing.

Through their legal representative<sup>13</sup>, the youth, elders and leaders of the affected communities wrote<sup>14</sup> to the FCDA asserting their right to live within the Green Districts in the FCT, as guaranteed under the 1999 Nigerian Constitution and other regional and international human rights instruments. In that letter, the land swap-impacted project communities summed up their demands as follows<sup>15</sup>:

- That we reiterate our agitation for the right of existence as communities enjoying all the benefits inherent thereto as such:
- We are entitled to the rights to life, family life, without discrimination;
- We are entitled to pursue our economic activities whereupon we are known for farming and doing other agricultural activities on our ancestral lands as our only means and source of livelihood;
- We are entitled to own properties as guaranteed under section 44 of the Constitution 1999, as (as amended);
- We are entitled to control our own natural resources – land;
- We are entitled to the right to be heard and be consulted before any decision is taken by the authority especially where such decision will affect us as communities ever in existence from time immemorial before the advent of the FCT.
- The purpose for which our farmlands are being acquired is not other than private purpose in the quest for PPP programme.
- Should it become necessary that our lands be so acquired for PPP programme, a programme we believe is an investment that would earn profit for the private developers and the government, the authority should instead, initiate a new model global programme known as Public Private Community Partnership (PPCP). This will be so done considering the land, which is the main source for the development, is the property of the people of the communities as such any interest derivable from it should be shared proportionately among those who are the stakeholders in it.

<sup>12</sup> Abubakar Yakubu (Chairman, Ketti/ Waru Community Youth Forum); Ahmed Tanko Umar (Secretary); Paul Kabusa (Public Relations Officer); and Isaac David (Chairman, Original Inhabitants Development Association (OIDA) Garki chiefdom

<sup>13</sup> J. E. Ndeye & Co, Ndeye Chambers

<sup>14</sup> Letter addressed to the Honourable Minister of the FCT dated March 12, 2013: Notification to maintain legal action against the Hon. Minister, the FCDA, the Director Resettlement and Compensation, the Attorney General of the Federation and 6 other corporate organizations in respect of the purportedly acquired plots of land within Ketti and Waru Districts (Sector O) District, Phase IV, FCT, Abuja.

<sup>15</sup> J. E. Ndeye & Co, Ndeye Chambers Letter to dated March 12, 2013 addressed to the Honourable Minister of the FCT





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

The growing discontent among the local populations is attributable to FCDA's continuing hesitation to launch participatory arrangements that allow for increased community participation and ownership of the project. More specifically, on April 2013, angry local youths, in protest, chased off officials that intruded into their farmlands to carry out survey drawings and enumeration activities<sup>16</sup>. This sort of action began to spread from community to community, which caused significant financial losses and embarrassment to the government.

Despite recurrent threats of arrests and intimidations by security agencies, the local youth, in



collaboration with **Spaces for Change**, is continuing to sensitize and build the capacity of local populations to monitor every phase of the project's implementation to avert any departure from the rule of law, applicable international and regional human rights standards.

#### **Extensive derogation from applicable national, regional and international law**

An onsite visit in May 2013 and other off-site investigations revealed considerable deficits in the extent and quality of consultation, inclusion and participation of the local populations in the project's planning and implementation processes. In separate letters dated January 28, 2013, the FCDA's Department of Resettlement and Compensation informed leaders<sup>17</sup> of various villages in Waru District that:

*319 hectares have been allocated to Messrs Ridley Group within Sheretti (A) District; Messrs. Afri International Project Consulting Limited within Burun B District; Messrs*

<sup>16</sup> <sup>16</sup> Spaces for Change meeting with the Ketti/Warru Community Youth Forum| May 1, 2013

<sup>17</sup> Hakimi Waru





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

*Rosehill Group within Waru Pozema “A” District respectively under the Public Private Partnership project by the Honourable Minister of the FCT.*

*“In view of the above, survey work is to start immediately within the district, while the valuation of crops/economic trees on the said plot will commence thereafter.*

*We therefore solicit your cooperation in allowing the survey works to continue to enable the perimeter of the site to be established and the collection of other survey data”.*

Apparently, the letters referenced above only sought to notify project-affected communities about the land acquisitions and allocations to new owners. They do not attempt to seek their input or participation in development decisions or activities relating to the project beyond yielding up possession and “*allowing the survey works to continue.*” The letters neither made any reference to the land swap initiative nor disclosed the reason for the allocation of the communally-held lands to the new owners as required by law. These letters sharply contravene both the conditions and procedures for a valid revocation contained in section 28(3) of the Land Use Act, the same law upon which the land swap model is premised on.

Again, the law requires that such revocation notices must specify the actual land mass and delineations acquired, and above all, the acquisitions must be for a PUBLIC PURPOSE<sup>18</sup>. Where the land sought to be acquired is community land, a schedule showing the boundaries, precincts and other identities of the areas being acquired must be attached to the notice. In **Provost, Lagos State College of Education vs. Edun, [2004] FWLR (PT 201) 1628 at 1649**, the court held:

*“A notice of acquisition of property must be specific and precise as to the property acquired...If an acquisition involves a community acquisition, there should be a schedule to the Notice of Acquisition specifically spelling out the boundaries and other identities of the area or areas acquired.”*

Evidence shows that the FCDA has flouted above due process provisions as efforts to establish the boundaries and the actual land mass acquired commenced only after title has been transferred to the developers, and MoUs executed between the FCTA and the developers. Furthermore, owners of acquired land are entitled to a fair hearing and access to the courts should they have any

---

<sup>18</sup> 28 (1)



# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

objections to the land revocations<sup>19</sup>. Sections 43 and 44 of the 1999 Nigerian Constitution guarantee all individuals without discrimination or qualification, the right to acquire and own property and to freely use and enjoy such property without interference. According to S. 44:

*44. (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 thereof 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.*

The above judicial pronouncements and constitutional provision impose an obligation on the FCDA to proceed with any public purpose acquisition in accordance with appropriate law, and with recourse to the courts of law, and the payment of prompt and adequate compensation. The process of calculating compensation becomes unnecessarily complicated when demolitions have already occurred. Now that evictions have not yet taken place, it is imperative to have the properties on the appropriated lands assessed by an independent surveyor who can determine a fair price of compensation. In addition, the FCDA must ensure that the affected Abuja communities are compensated in such a way that as much as possible, places them in their *status quo* position before the land takings.

Beyond the strict constitutional requirements, the court has a duty to fully protect the right to fair hearing and fully investigate any breach of rights concerning due process breaches, deprivation of fair hearing and fundamental rights violations that may arise from compensation-related disputes. The right to a fair trial is to be preserved regardless of the ultimate guilt or innocence of the parties involved.

*..Any acquisition that simply aims to transfer the acquired land to an individual or group of persons with certain vested interests which either by accident or design is similar to the purpose, for which the state may acquire other people's property, is unlawful and void. These legal clarifications show that FCDA's handover of communal lands to private developers for reasons that merely wear the semblance of public purposes clearly flout the provisions of the Land Use Act.*

<sup>19</sup> Oto vs. Adojo [2004] All FWLR 2151 at page 2174-2175





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

#### Overriding public interest

Section 28 (1) of the Act empowers the Governor of a State to revoke a right of occupancy for “overriding public interest”. In the case of the Federal Capital Territory, the FCT Minister assumes the role of a governor and can exercise powers similar to those vested on state governors. The public purpose for which land is revoked must be disclosed to the person whose property is to be taken.

It must be emphasized that the Governor’s power of revocation for an overriding public interest does not allow for the revocation of an individual’s interest in land and granting same to another for a private purpose. Since the purpose of revocation is for public good and not for the benefit of an individual, any such revocation for benefit of an individual is null and void and of no effect. In *Ereun & ors vs. The Military Governor, Mid-Western State of Nigeria*<sup>20</sup>, the Supreme Court held that “section 2 of the Public Lands Acquisition Law clearly contemplates acquisition for the public purpose of the State and not any private enterprise that might accidentally be of benefit to the community or a section of it.”

This principle is clearly entrenched in the decision of the Court in the case of *Lawson vs Ajibulu*<sup>21</sup>:

*“But I conceive that the acquisition must primarily be made to fulfill the legitimate ends of government and not directly or indirectly for the sole and personal benefit of any individual or group of persons with certain vested interests which either by accident or design tally with the purpose government is empowered by law to compulsorily acquire other people’s land”.*

From the above decision, any acquisition that simply aims to transfer the acquired land to an individual or group of persons with certain vested interests which either by accident or design are similar to the purpose for which the state may acquire other people’s property, is unlawful and void. These legal clarifications show that FCDA’s handover of communal lands to private developers for reasons that merely wear the semblance of public purposes clearly flout the provisions of the Land Use Act.

<sup>20</sup> (1974) 10 SC59 at 66

<sup>21</sup> (1991) 6 NWLR (pt 195) 44





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

#### The right to be compensated

S. 44 of the Constitution makes it clear that the revocation of a right of occupancy must be accompanied by the payment of compensation. In addition to this constitutional guarantee, section 29 of the Land Use Act restates the right of compensation to any person whose interest in land is revoked for public interest purposes. This legal right of compensation has further attracted judicial affirmation. In the case of *A.G. Bendel V Aideyan*<sup>22</sup>, Nnaemeka Agu JSC opined:

*“In Nigeria, one’s right to one’s property was an entrenched constitutional right. That right is inviolate. In the ipsissima verba of the constitution itself, such a property or any right attendant thereto can only be taken possession of or compulsorily acquired under the provision of law. Furthermore, such a law must provide for the payment of adequate compensation therefore to him, and must give the owner the right of access to a High court for the determination of his interest in the property and amount of compensation due to him.”*

Article 14 of the African Charter adds to the guarantees already included in the Nigerian Constitution the requirement that the right to property – any form of property – may only be encroached “in the interest of public need or in the general interest of the community.” In determining whether the taking of property is justified by public need or the general interest of the community, the appropriating authority (often the government) must equitably demonstrate that the urgency of the public need and the importance of the general interest outweighs the harm suffered by the immediately-affected persons who are deprived of their property. This calculation must take into consideration the other rights guaranteed by the Constitution and the African Charter that are also at stake. The government’s proposed acquisition will be evaluated in light of both equity and the directive principles enshrined in the Nigerian Constitution, including the promotion of family life under Section 17(3)(h), and the protection of people’s security and welfare as a primary purpose of Government under Section 14(2)(b).

The African Commission adopted the above reasoning in the **Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council Vs. Kenya**<sup>23</sup> held that “any limitations on rights must be proportionate to a legitimate need, and should be the least restrictive measures possible.” Applying the “public interest test” under Article 14, the Commission found that Kenya’s displacement of the Endorois community was disproportionate to the public interest stated. The

<sup>22</sup> (1989) NWLR pt 118 p646 at 667

<sup>23</sup> , Communication No. 276 / 2003 at paragraph 214,





# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

Commission anchored this test on the claimants' right to life and livelihood and the principles of human dignity.

The Governor or the local government may resettle, in lieu of compensation, any person whose developed, residential land is revoked. Where a person accepts resettlement in lieu of compensation, he will be deemed to have been adequately satisfied and no further compensation shall be paid to the person.<sup>24</sup> Where the value of the alternative accommodation provided is higher than the compensation payable, the excess shall constitute a loan repayable to the Government in the prescribed manner. Acceptance of resettlement forecloses any right to further compensation by the person(s) concerned.

Local agitations – within the aggrieved Ketti and Warru communities - for resettlement and provision of alternative farmlands seem to have been anchored on S.33 of the Land Use Act. Being predominantly farmers, the loss of land would mean stripping local populations of their traditional means of livelihood, loss of cultural identity and heritage<sup>25</sup>, relinquishment of scarce land resources for future generations which would in turn, permanently stifle the local economy and cultural progress. These concerns propelled the agitating communities to ask the FCT Minister:

*“What is your plan for income restoration and youth empowerment for the people affected by this program”<sup>26</sup>?*

The present compensation policy of the FCT requires that all affected assets (land and structures) are fully compensated at their replacement cost. This means that the replacement cost of an affected asset is equivalent to the amount required to replace the asset in its existing condition<sup>27</sup>. If this policy is followed, the land assets belonging to the indigenous people will be grossly undervalued and then sold to land developers who would make disproportionately high profits from the sales of these lands. Moreso, existing valuation rates do not reflect the current social and economic realities as the land compensation regime has never been reviewed in over 34 years of the Land Use Act's operation.

<sup>24</sup> S. 33(1) of the Act

<sup>25</sup> Gbagyis have historical and cultural beliefs like in shrines widely known and called Amwamwa, Agolobe, Abori, Ogango, Atumage, etc.

<sup>26</sup> Ketti/Warru District Community Youth Forum in collaboration with the elders of the affected communities in the FCT Abuja: Position Paper of the Affected Communities of the Land Swap Initiative of the FCT, being a paper delivered at the Town Hall Meeting held with the FCDA at the African Hall of the International Conference Center, Abuja on April 26, 2013. Page 3

<sup>27</sup> Ketti/Warru District Community Youth Forum Position Paper ibid at page 2



# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

#### Compensation for unexhausted improvements

Where a right of occupancy is revoked on grounds that the land is either required by the Local, State or Federal Government for public purpose, or that it is required for the extraction of building materials, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements. Unexhausted improvements have been defined by the Act as:

*“Anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing, wells, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce”.*

This means that although the provisions of relating to compensation are not penal, there is no compensation payable where the property over which the title is revoked is vacant land without any physical improvements. All that the Act does is to only compensate for the value as at the date of revocation, of any unexhausted improvements on land.

Very often, this provision is arbitrarily employed by city planning authorities to justify non-payment of compensation for development-related land takings. Hope, however, radiates from 39 (1) (b) of the Act, which empowers the courts to determine any dispute resulting from the compensation processes. By that provision, the High Court has the jurisdiction to entertain proceedings to determine any question as to the persons entitled to compensation for improvements on land under the Act. Where therefore, indigenous communities are denied an opportunity to benefit from the actual land values because they had no improvements on the land, the courts can intervene to review the administrative procedures to ascertain and redress any wrong that may occasion injustice to them. Numerous cases have however shown that Nigerian courts are often very slow in intervening in compensation matters.

#### Lack of participatory processes

Aggrieved indigenous communities fault the Public Private Partnership model on which the land swap model is predicated on because it excludes the involvement of communities in the redevelopment interventions, recognizing only the contractual relationship between the FCTA and the private developers. This present structure neither incentivizes indigenous communities’



# SPACES FOR CHANGE

## Abuja Land Swap Initiative: The Challenges Within | Volume 9

improvement of their housing conditions, nor allows self-help development of their own lands even if they have the resources to do so.

There are also concerns that the contractual agreement with the developers does not outline community roles and benefits under the project, including the standards guiding the relations between the developers and the affected communities. Another critical dimension is the absence of an inbuilt mechanism and modality for resolving project-related disputes among communities, and between the communities and the FCTA/and or developers. Should the Abuja indigenous communities continue to allow preliminary activities to be carried out such as the survey, enumeration and assessment of economic trees and crops absent these structures for participatory engagement and conflict resolution, it is doubtful that the FCTA will mobilise the adequate political will needed to address resulting future infractions in a way that responds to local priorities and interests. No remedial action or grievance procedures are available to the affected communities if they are dissatisfied with results of the enumeration and demographic surveys.



Typical of projects of such magnitude, skilled labour is often sourced from host communities, and instruments are developed to ensure that local youths within the host communities are accorded priority selection in the emerging job opportunities. There is no such guarantee that this benefit will accrue to the land swap-affected communities.

An all-inclusive project implementation framework that will guarantee local participation in the redevelopment activities tops the affected communities' list of priorities. In this regard, the absence of a community representative on a technical steering committee<sup>28</sup> constituted by the FCDA fuelled anxiety that community participation was not central to the project's design and implementation activities proposed by the FCTA. Not only that, mechanism has been put in

<sup>28</sup> The technical Steering Community is headed by the Executive Secretary (ES) of the FCDA



# SPACES FOR CHANGE

## Abuja Land Swap Initiative: The Challenges Within | Volume 9

place to actualize local demands that any compensation payable must be based on a thorough enumeration involving the community participation in the process of property valuation. Mounting community outrage propelled the FCT Minister to set up another Ministerial Committee on the Land Swap Program, with three community representatives<sup>29</sup> currently serving as members<sup>30</sup>.

### Frequent policy changes

Since the inception of the Federal Capital Territory in 1976, there have been about four major policy changes affecting resettlement of indigenes within the FCT. At meetings held between the affected communities in the land swap districts and the FCDA's Community Relations Consultants and the project's Technical Steering Committee, the indigenous people of the FCT unanimously demanded to be integrated within the project sites<sup>31</sup>. The quest for integration dates back to 1992 when the government proposed an "integration policy"<sup>32</sup> for those who have chosen to remain in the FCT as against complete resettlement<sup>33</sup>. In 1999 the "Integration Policy" was reversed for that of complete resettlement again. In 2003, another policy change was introduced which aimed restoring the original provisions of the master plan. Although not yet realized till date, resettling 28 villages within the Federal Capital City initially earmarked for resettlement in the master plan was the policy's main agenda. These official policies fraught with

<sup>29</sup> Community representatives on the Ministerial Committee are: the community's legal adviser; the Ketti/Warru Youth leader and the OIDA Chairman

<sup>30</sup> Spaces for Change interview with James Egah, esq., J. E. Ndeye & Co, Ketti/Warru Legal Representative

<sup>31</sup> Spaces for Change meeting with Ketti and Warru Community Youth Forum; May 1, 2013

<sup>32</sup> Accordingly, Garki village within Garki II District of the city in phase I was allowed to remain, except for the people to be affected by the construction of access roads and other infrastructures.

<sup>33</sup> Ibrahim Usman JIBRIL, Resettlement Issues, Squatter Settlements and the Problems of Land Administration in Abuja, Nigeria's Federal Capital Settlements of Jabi, Kado, Gwarinpa among others within phase II of the city were slated for resettlement outside the FCC. Actual construction work started at the end of 1999 on the new site in Jibi resettlement town within the FCT. The resettlement exercise has not been completed till date.







# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

several irregularities and inconsistencies have seen indigenous communities bearing the brunt of the fluctuating measures, with spiraling effects in communal tenure security.

#### The human rights challenge

The human rights framework presents the most formidable and objective tool available to alter persisting social, economic and political power relations that help make inclusive participatory development impossible. Should the movement of people become necessary in its development plans, the FCDA still has a duty to provide adequate alternative housing, including farmlands for all residents that may be affected by their plans.

While efforts to improve housing and urban infrastructure within the city metropolis are welcome, pushing people from inadequate housing into homelessness is not the solution to the acute housing shortage currently witnessed in the federal capital. Spaces for Change supports the right of the inhabitants of Ketti and Warru to have a say in decisions that affect their lives. Genuine consultation with, and participation by the affected residents in the design of FCTA's housing development strategies and programmes are indispensable strategies for ensuring that the human rights of the indigenous communities are respected.

**Spaces for Change (S4C) is a non-profit organization working to infuse human rights into social and economic governance processes in Nigeria. Through research, policy analysis, advocacy, youth engagement, public interest litigation and community action, the organization aims to increase the participation of Nigerian youth, women and marginalized constituencies in social and economic development, and also help public authorities and corporate entities to put a human rights approach at the heart of their decision-making.**



# SPACES FOR CHANGE

## Abuja Land Swap Initiative:

### The Challenges Within | Volume 9

*Prepared by: Spaces for Change* under the auspices of its **Policing the Policy** series

*Headquarters:*

3A Oduyemi Street, 1st Floor  
Opposite Ikeja Local Government Secretariat  
Anifowoshe, Ikeja  
Lagos  
Nigeria

Email: [spacesforchange.s4c@gmail.com](mailto:spacesforchange.s4c@gmail.com);  
[info@spacesforchange.org](mailto:info@spacesforchange.org)

Website: [www.spacesforchange.org](http://www.spacesforchange.org)

Blog: [www.spacesforchange.blogspot.com](http://www.spacesforchange.blogspot.com)

E:Library: <http://issuu.com/spaces.for.change/docs/>

Facebook: <http://www.facebook.com/groups/spacesforchange/>

Flickr: <http://www.flickr.com/photos/spacesforchange/>

Twitter: @spaces4change

Telephone: +234.1.8921097

+234.81.84339156

© **May 2013**

#### **Spaces for Youth Development and Social Change (Spaces for Change)**

All rights reserved. This book is copyrighted and so no part of it may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, electrostatic, magnetic tape, photocopying, recording or otherwise, without the prior written permission of the copyright owner.

