journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Legal Impediments Militating Against Access to Rural Electricity in Nigeria: Section 3 of the Land Use Act in Focus

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Abstract

Achieving improved access to electricity for rural areas has proved difficult in Nigeria. The paper focuses on the impact of section 3 of the Land Use Act on rural electricity access in Nigeria. It adopts the doctrinal methodology of research and found that the definition of what makes an area rural as contained in section 3 of the Land Use Act is vague, not comprehensive and is an impediment to the attainment of improved rural electricity access. In conclusion, the paper argues that for Nigeria to attain electricity for all there must be improved rural electricity access. The paper recommends that for the purposes of improving rural electricity access section 3 of the Land Use Act be amended to include features such as low population density, limited access to large cities, traditional life style and long proximity to market and work in the determination of what makes a location rural.

Keywords: Rural Electricity, Land Use, Designation, Improved Access.

1. Introduction

The 2021 climate scorecard states that generally, a large portion of Nigeria's population does not have access to electricity.[1] This is as a result of poor public infrastructure in rural areas with a minimal percentage of its population having access to electricity.[2] Furthermore, some authors have stated that on the average, although not statistically significant, enterprises in communities connected to electricity grid are 16.2% more profitable than enterprises in communities not connected to the grid and as such use generating sets in providing back-up electricity.[3] It was also discovered that the total expenditure on generating set by some enterprises is up to three times the tariff for grid electricity, and the high cost of self-generated electricity increases the total cost of doing business in rural areas which reduces the profit margin of micro-enterprises.[4]

It has also been observed that per capita electricity consumption for rural residents is 17Kwh in Nigeria, and households in rural areas have short hours of electricity supply than urban residents.[5]

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[1] Peter Hansen, 'A significant Portion of Nigeria's Population is Still without Access to Electricity', Climate Score card. (2021) <https://www.climatescorecard.org/2021/02/a-significant-portion-of-nigerias-population-is-still-without -access-to-electricity> accessed 12th of August 2021.

[2] Ibid.

[3] UduakAkpan, Maurice Essien and Salisu Isihak, 'The Impact of Rural Electrification on Rural Micro- Enterprises in Niger Delta, Nigeria' *Sustainability Policy and Innovative Development Research Solution Nigeria Project*, [2013] 1

[4] Ibid

[5] KayodeOlaniyan and others, 'Estimating Residential Electricity In Nigeria To Support Energy Transitions' [2018] *MPDI Sustainability Journal,* 7

Urban households have eight hours of electricity supply while rural households have six hours on the average.[6] Based on this disparity, energy access is a more serious challenge for rural areas in Nigeria.[7]

One of the challenges attributed to the improvement of rural electricity accessing Nigeria is the issue of determining what makes a location urban or rural.[8]This issue is critical to the acquisition and use of land in the development of critical projects aimed at improving rural electricity access. In Nigeria, land acquisition is governed by the provisions of the Land Use Act of 1978 (LUA), which vests all land in the Governor of a State who holds it in trust for the public.[9] Section 3 of the LUA prescribes the procedure to be adopted in designating an area as either urban or rural.

This paper argues further that the interpretation given by the court, as to what makes a location rural in line with section 3 of the Land Use Act manifests as a gap in the improvement of rural electricity access in Nigeria as it does not give room for the adoption of specific features that can give rise to concrete planning and informed decision. In addressing this gap, the paper examines the decision of the court *visa vis* section 3 of the Land Use Act and identifies certain features that would assist and guide policy makers and stakeholders in setting up measureable targets in the improvement of rural electricity access in Nigeria.

In this respect the objective of this paper is to examine whether the interpretation of section 3 of the Land Use Act by the court with respect to what makes an area rural is a legal impediment to the improvement of rural electricity access in Nigeria. In achieving this objective, the paper discusses the concept rural electricity access and proceeds to examine the legal framework regulating rural electricity access in Nigeria. This paper also highlights specific features that should guide policy makers in the designation of an area as rural.

2. Concept of Rural Electricity Access

Rural electricity access could occur when electricity is linked to rural areas outside cities.[10] This definition is focused mainly on connectivity. It could also mean electricity or energy used in rural areas that is obtained from renewable energy.[11]Rural electricity access includes the quantity and quality of energy services that are available, affordable and sustainable which empowers both men and women, especially the poor.[12] This paper will now discuss some of the components of rural electricity access that has been highlighted.

2.1 Availability

Availability of electricity connotes the reliability and sufficiency of electricityin rural areas.It has been argued that electricity supply in Nigeria is highly unreliable and insufficient; it is also of low

[6] Ibid,11
[7] Ibid,13
[8] DijiC. J, 'A Critical Assessment of the Nigerian Rural Electrification Policy' *International Journal of Advanced Studies in Engineering and Scientific* Inventions,[2014] (2) (1)120.
[9] YemiOke, 'Compulsory Purchase as an Alternative to Revocation of Title to land For Electricity Purpose In Nigeria') *The Journal Of Private and Property Law*, [2013] (30) 36-59.
[10] Adriaan N. Zomers, 'Rural Electrification' (PhD diss., University of Twente- Netherlands.(2001),40
[11] Access to Energy in Low America and Caribbean Region: Lessons Learned and Recommendations. International Finance Corporation. World Bank Group (2013) <https://www.ifc.org/wps/wcm/connect /b08155004f9e8e3cbdcaff0098cb14b9/Access+to+Energy+in+LAC-Final+Report.pd> accessed 18th March 2019
[12] Ewah O. Eleri, 'Expanding Access To Pro-Poor Energy Services in Nigeria' International Centre for Energy, Environment and Development (2012) <http://iceednigeria.org/backup/workspace/uploads/final-pro-poor-energy-access-paper-26-nov.pdf> accessed 17 March, (2019), 3

quality. There is also high level of disparity between electricity demand and supply. The estimated power demand is 17,520MW and generation capacity is 53000MW. Nigeria also frequently experiences interruptions or inadequate supply of gas due to vandalization of gas pipelines in the Niger Delta region.[13] The nation also experiences seasonal fluctuations in weather which leads to reduced water availability for thermal generation of electricity.[14] Also, over sixty percent of rural homes experience frequent blackout and high connection cost. Unreliability of services is one of the reasons for lack of electricity.[15]

2.2 Affordability

Affordability entails the purchasing power of a rural population to pay for the cost of electricity that is supplied to them. With a very poor minimum wage of ₦30,000 monthly[16] and with many Nigerians earning below the minimum wage, especially in semi urban and rural areas, many Nigerians cannot afford to pay for electricity. "These factors, especially the fact that the rural population in Nigeria lacks the required income to pay for energy services, make rural communities less attractive for investments.[17] The inability to pay for improved energy services in rural areas is, therefore, a major challenge based on the fact that a preponderance of the rural population are basically low income earners.[18]

2.3 Sustainability

Sustainability has several dimensions. It could be economic or environmental sustainability. Nigeria has not done relatively well in the aspect of economic sustainability which encompasses adopting cost effective solutions and procuring funding for both the initial investments and maintenance of electricity systems. For instance, it has been estimated that in 2020 the federal government and its agencies spent the sum of N9bn on the maintenance, fueling, and purchase of new generators for that fiscal year alone.[19]"The world bank has also observed that more than fifty five percent of households in Nigeria, which are mainly located in the rural areas, are not connected to the national grid and they rely on fuel based lighting options with generating sets providing fifteen percent, candle light two percent, rechargeable lamp ten percent, kerosene thirty five percent, firewood six percent, and batteries thirty three percent. These sources of lighting also have relatively high cost.[20]

Environmental sustainability is basically poor in the country as a result of the poor nature of electricity supply with its reliance on other alternative sources of supply through the use of fossil

[13]Obideyi Oluwatoni, *'Integrating Renewable Energy into Nigeria's Energy Mix: Implications for Energy Security'* (Master's Thesis, Norwegian University of Life Sciences, Norway, 2017) 39-40.
[14]Ibid
[15]Sanusi Mohammed Ohaire, '*Financing Rural Energy Projects in Developing Countries: A Case Study Of Nigeria'* (PhD diss, The Momtfort University, United Kingdom,2014) 37.
[16]Nathaniel. E. Urama, 'The Proposed N30,000 Minimum Wage in Nigeria: Affordability and Sustainability' *Research Gate Publication*, [2019] 1.
[17]Sanusi, 'Financing Rural Energy Projects',9.
[18]Bamidele A. Badejo, Nathaniel O. Ogunseye and Omowuni Olasunkanmi, 'An Evaluation of Rural Electrification In Nigeria: A Case Study of Ibogun Community, Ogun State' *Interdisciplinary Research Review* [2020] (15) (4) 8
[19] <https://techcabal.com/2020/02/14/solar-power-nigeria/>accessed 27th December 2020.
[20] The World Bank: Project Appraisal Document on A Proposed Credit to The Federal Republic of Nigeria For The Nigeria Electrification Project (2018)<http://documents.worldbank.org/curated/en/367411530329645409/pdf/Nigeria-Electrification-PAD2524-06052018.pdf> accessed 1st o April, 2019

fuel generating set for domestic and commercial electricity supply.[21] The combustion of fossil fuel in generating set has been associated with environmental pollution which has harmful effect on the physical and mental health of individuals; another harmful effect of generating set is the noise it produces which causes nuisance not only to the user but to other residents.[22] The substances from these fumes contain hydrocarbons, fluorides, nitrates, sulfur, carcinogens, benzoyl that damage the edges of plants, cause leaves to turn silvery, cause acid rain, impair breathing, damage long tissue and cause cancer in animals.[23] The exploration of petroleum products has also led to the pollution of the air, water, and land in the country. For instance, Nigeria is said to flare about 2.5 billion cubic feet of gas per day, and this translates to about 12 percent of globally flared gas, and emits 70 million tons of carbon dioxide.[24]

3. Rural Electrification

Closely linked to rural electricity access is the term, rural electrification. Rural electrification is the provision of electricity for use in rural communities without considering the source from which electricity is generated.[25] Rural electrification could also mean the process by which the use of electricity is provided to a local population situated in the remote areas of a country.[26] It could be viewed as the supply of electricity to small towns and villages and agro based industries outside the regional capitals to bring about important social and economic benefits.[27]It has been stated that rural electrification further entails the processes put in place to provide people with access to electricity and other modern energy services.[28] Some definitions examine it as providing electricity to communities of between 500 to 2000 people.[29]

Rural electrification schemes differ in several countries. For instance, in India, prior to 1997, a village was said to be electrified if electricity was used within its revenue area for any purpose whatsoever.[30] After 1997, this definition changed and a village was said to be electrified if electricity was used within an inhabited locality within the revenue boundary of the village for any purpose whatsoever.[31] This second definition also changed and a village was latter said to be electrified if the following existed: (a) distribution transformers and distribution lines are provided in the locality; (b) electricity is provided to public places like schools, panchayat office, health

[21]Olutayo Olaitan Odunola and others, 'Implications of Fossil Generating Set on Residents Wellbeing in Lagos Nigeria' *All African Journal for Psychological Study of Social Issues*,[2018] (2) (2) 253.
[22] Ibid,254
[23] Chukwu M.N and Adams E.A, 'Effect of Generator (Exhaust) Fumes on The Growth and Development of Lycopersicum Esculentus (Tomato)' {*J.Appl. Scien. Environ, Manage*,[2016] (20) (2) 335.
[24] Iwayemi Akin and others, 'Towards Sustainable Universal Electricity Access in Nigeria' *Centre For Petroleum, Energy Economics and Law Monograph* Series [*2014*] (*1*)(*2*) 45.
[25] IngeWijgerse, The Electricity System For A Rural Village In Mali. (MSc. Thesis. Eindhoven University of Technology. Netherlands. (2008.)5.
[26] Alexandra Niez, 'Comparative Study on Rural Electrification Policies in emerging Economies' *Information Paper by the International Energy Agency,* OECD/IEA [2010] 12
[27] George Yam Obeng, Hans Dieter Evers, 'Solar PV Rural Electrification and Energy Poverty: A Conceptual Framework with Reference To Ghana' (2009) Technology Consultancy Centre Kwame Nkrumah University of Science and Technology. University of Bonn.,3
[28] Diji,120
[29] Ibid
[30] Definition of Electrified Village, <http://www.ddugjy.gov.in/portal/definition_electrified_village.jsp> accessed 20thMarch 2019.
[31] Ibid.

centres, dispensaries, community centres, and (d) the number of households electrified should be at least ten percent of the total number of households in the village.[32]

It has been argued that rural electrification offers both social and economic benefits.[33] The social benefits of rural electrification begins at the household level, were electricity is used forpowering light bulbs, fans, telephone. Also access to information, communication and health care is improved by the powering of computers and phones.[34] When electricity is used for lighting, the relative brightness of the light bulb as opposed to candle light allows children to read at late hours of the day which results in educational and leisure benefits.[35]Economically, rural electrification is seen by policy makers as an income generating process, as the use of electricity will lead to the growth of businesses.[36]

According to Trotter, rural electrification is the percentage of the rural population with access to electricity and is a crucial part of socio-economic development.[37] This definition of rural electrification is instructive and relevant to this paper because it links rural electrification to rural electricity access and it suggests that the basic aim or the end result of rural electrification is to increase access to rural electricity.

It is the view of this paper that rural electrification or rural electricity access entails the entire procedures put in place to grant any rural population access to electricity. Furthermore, in the context of this paper, the term rural electricity access or rural electrification will be ascribed the same meaning. This is based on the fact that whether the term rural electrification or rural electricity access is adopted, the main purpose of each of these terms is to ensure that a targeted rural population can access or enjoy electricity for development purposes.

3.1 Certain features have been ascribed to the term rural electrification. They are:

1. Limitation by geographical location;
2. Providing electricity to areas with low population density and dispersed communities with low level of consumption (low load factor) and low demand growth profile;
3. Traditionally, extension of transmission and distribution network is prioritized. However, the method becomes technically and economically infeasible as electrification programmes progress, decentralized or stand-alone systems are favoured as villages are smaller and more isolated;
4. Diesel generators are mostly used and the cost of operation and maintenance is high, which is caused by excessive acquisition and transportation cost of diesel fuel;
5. Excessive costs of supply, distribution and maintenance resulting from the combined effect of the aforementioned characteristics; and

[32] Ibid.
[33] Niez, 'Comparative Study on Rural Electrification Policies in emerging Economies, 12.
[34] Ibid, 13.
[35] Ibid, 13
[36] Ibid, 13
[37] Philipp. A. Trotter, 'Rural Electricity Electrification Inequality and Democratic Institutions In Sub-Saharan Africa' *Energy For Sustainable Development* [2016] (34) 111-129.

6. Having consumers who cannot afford to pay and income level that cannot be equated to city dwellers.[38]"

In determining the precise meaning of rural electrification or rural electricity access, it has been argued that there is the need to state what makes a location urban or rural and this has been identified as one of the challenges inherent in providing a precise meaning of rural electrification.[39]In the United States, a rural area is geographically defined by the Census Bureau as all territory outside the Bureau's definition as urbanized areas and urban clusters.[40] An urbanized area is a central city and surrounding area whose population is greater than 50,000.[41]

Though, the 1991 population census in Nigeria describes a rural area as a settlement with less than 20,000 inhabitants,[42] it has been stated that there has not been any attempt to map out what essentially or specifically makes a location rural in Nigeria.[43]

4. Legal Framework for Access to Rural Electricity in Nigeria

This aspect of the paper will examine the constitutional and statutory provisions regulating rural electricity access in Nigeria. In this respect the provisions of the 1999 Constitution as amended, Electricity Act, 2023 and the Land Use Act, 1978 will be examined.

4.1 Rural Electricity Access under the 1999 Constitution

The 1999 Constitution of the Federal Republic of Nigeria is the supreme law of the land.[44] The Second Schedule and Part II of the Concurrent Legislative List of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN), as amended, provides that:

(1) the National Assembly may make laws for the Federation or any part thereof with respect to electricity and the establishment of electric power stations;

(2) the generation and transmission of electricity in or to any part of the federation and from one state to another state;

(3) the regulation of the right of any person or authority to dam up or otherwise interfere with the flow of water from sources in any part of the federation;

(4) the participation of the federation in any arrangement with another country for the generation, transmission and distribution of electricity for any area partly within and partly outside the federation;

(5) the regulation of the right of any person or authority to use, work or operate any plant, apparatus, equipment or work designed for the supply or use of electrical energy.

A House of Assembly may make laws for the State with respect to –

(1) electricity and the establishment in that State of electric power stations;

[38] Tian Shen Liang, 'Rural Electrification in East Malaysia- Achieving Optimal Power Generation and Sustainability of Rural Electrification Projects'(MSc Thesis Energy Technology. Stolkhom. (2016.),21
[39] Diji,120
[40] Babalola Daniel Olatunde, 'Rural Transformation in the Developing Countries' *Journal of Sustainable Development and Environmental Protection*, [2012] (2) (3) 84.
[41] Ibid.
[42] Ignatius Ani Madu , 'The Structure and Pattern of Rurality In Nigeria' *Geo Journal*, [2010] (75) (2) 176.
[43] Ibid.
[44] Attorney General of Abia State *v.* Attorney General of the Federation (2002) LPELR 611 (SC).

(2) the generation, transmission and distribution of electricity to areas within that State; and

(3) the establishment within that State of any authority for the promotion and management of electric power stations established by the State.[45]

This constitutional provision is to the effect that both the Federal and State governments can legislate and regulate the generation, transmission and distribution of rural electricity access.[46]

Also Chapter 2 and Section 14(b) of the 1999 Constitution as amended provide that the security and welfare of the people shall be the primary purpose of government. Section 16(d) of the 1999 Constitution as amended also makes provision that the State shall ensure that sustainable and adequate shelter and adequate food, reasonable minimum wage and old care, sick benefits and welfare of disabled are provided for all citizens. These provisions can be linked to the fundamental rights of citizens in rural areas to access electricity. This is based on the fact that the Convention On The Elimination of All Forms of Discrimination Against Women (CEDAW) clearly recognizes electricity as a human right and states that parties are obligated to take all appropriate measures to eliminate discrimination against women in rural areas and in particular, shall ensure to such women the right to enjoy adequate living conditions, particularly in relation to electricity.[47]It has also been argued that the International Covenant on Economic Social and Cultural Rights (ICESCR) recognizes the right of everyone to an adequate standard of living including adequate food, clothing and housing and continuous improvement of living conditions.[48] The right to food as a means to subsistence engages electricity in several respects; electricity provides safe means of cooking, electricity is also essential to agriculture and a prerequisite for food security.[49]Electricity is also an implicit attribute of the right to adequate housing; it has been argued that electricity supplies therefore influences the adequacy, availability, affordability and habitability of housing, this is based on the fact habitability requires protecting people from harsh environmental conditions.[50]

As laudable as the provisions of sections 14 and 16 of the 1999 Constitution as amended may seem, most rural households in Nigeria still do not have access to electricity. The reason for this situation may be based on the fact that access to electricity may not have been viewed as a fundamental right of citizens; it may also be based on the fact that Chapter 2 of the Constitution has been deemed as non-justiciable or non-enforceable against the government.[51]

4.2 Rural Electricity Access under the Electricity Act, 2023 (EA)

Section 127 of the EA 2023 creates the Rural Electrification Agency (REA) as the main government agency to drive access to rural electricity and provide funding for rural electricity in Nigeria. The provision clearly establishes a dedicated institution for the regulation of rural electricity access in Nigeria. One of the initial criticisms against section 88 of the Electric Power Sector Reform Act of 2005 was that the rural electrification agency retained a centralized rural electricity structure which was located in Abuja rather than being closer to the rural populace. This

[45] CFRN, 1999
[46] On the 17th of March, 2023, President Muhammadu Buhari, assented to the constitutional amendment bill. The main thrust of the Bill is to allow States to generate and distribute power within their States without anyrestriction.
[47] Stephen Tully, 'Access To Electricity As A Human Right' *Netherland Quarterly of Human Rights*, [2016) (24) (4) 558.
[48] Ibid 562.
[49] Ibid.
[50] Ibid. 563.
[51] Section 6 (6) (c) CFRN, 1999

may have been responsible for the poor monitoring and implementation of rural electricity activities in the country.[52]In addressing this challenge section 152 (1) of the EA 2023 has provided a remarkable innovation by stating that for the purpose of effective execution, coordination and monitoring of rural electrification projects nationwide the agency shall collaborate with State rural electrification boards to establish local government rural electrification committees.

Section 142 of the EA 2023 also establishes the Rural Electrification Fund (REF) and section 147 of the EA 2023 empowers the REA, in consultation with the Minister of Power, to determine the criteria for the allocation of resources from the rural electricity fund. It has been argued that this provision does not take into consideration the views of rural communities in the decision making process for the allocation of resources from the rural electricity fund, even when a local matching fund from communities has been stated to be one of the criteria to be considered in the allocation of resources from the rural electricity fund.[53]

With respect to the acquisition of land for electricity projects section 118 of the EA 2023 states that:

> *Acquisition of land and access rights for electricity projects in Nigeria, including projects related to generation, transmission, distribution and supply of electricity shall be through voluntary and compulsory land acquisition procedures in compliance with the provisions of this Act, the Land Use Act and the Commissions Acquisition of land Access Rights for Electricity Projects Regulation or any amendment to it or regulations replacing it.*

The import of the above provision is to the effect that in Nigeria, acquisition of land and access rights for electricity projects in general or specifically for rural electricity projects is governed by the provisions of the Electricity Act 2023, the Land Use Act 1978 and the Nigeria Electricity Regulatory Commission (NERC) Access Rights for Electricity Projects Regulation. The objective of this paper as stated above is to examine whether the interpretation of section 3 of the Land Use Act by the court with respect to what makes an area rural is a legal impediment to the improvement of rural electricity access in Nigeria. The next segment of the paper will examine the provisions of the Land Use Act.

”**4.3 The Land Use Act**

In Nigeria, land acquisition is governed by the provisions of the LUA which vests all land in the Governor of a State who holds it in trust for the public. Section 3 of the LUA provides thus:

> *Subject to such general conditions as may be specified in that behalf by the National Council of State, the Governor may for the purposes of this Act by order published in the State Gazette designate the part of the area of the territory of the State constituting land in an urban area.*

From the above provision of the LUA, it is the State Governors that have the powers to designate an area as an urban area and it is this position that the Court of Appeal held in the case of Amachukwu *v.* Ojukwu.[54] The case was an appeal filed at Court of Appeal against the decision of the High Court of Anambra State. The Plaintiff/Respondent claimed to have purchased a parcel of land in August, 1977 in Nnewi Anambra State and thereafter in 1980 applied to the State

[52] YemiOke, ‘National-Grid or National-Greed’ *Punch* (Lagos, 7th December, 2011) 4.
[53] YemiOke, ‘*Nigerian Electricity Law and Regulation* (Law Lords Publication,2013) 125 and EPSRA s 91(1) (iii)
[54] (2009) LPELR (8682)

Government to grant him a Certificate of Statutory Right of Occupancy. The application was granted. The Defendant/Appellant's case was that he bought the same piece of land from the same vendor in 1978 and in 1994 applied for and was granted a Certificate of Customary Right of Occupancy by the Nnewi Local Government. One of the issues for the appeal court to decide was whether the lower court was right to have held that the Nnewi North Local Government had no power to grant customary right of occupancy in respect of the land that is situated in an urban area. In addressing this issue, the Court of Appeal had to ascertain how a particular area in a State is designated as urban or non-urban/ rural. The court relied on section 3 of the land Use Act (LUA) of 1978, which provides as follows:

> *Subject to such general conditions as may be specified in that behalf by the National Council of States, the Governor may for the purposes of this Act by order published in the State Gazette designate the parts of the area of the territory of the State constituting land in an urban area.*

The court went on to state that:

> *From the above provisions of the LUA, 1978, any area of land in a State which has not been designated as Urban area by the Governor ordinarily falls within the areas considered to be non-urban area, which is within the competence of the Local Government to grant customary right of occupancy. In line with the provisions of Gazette No. 15 Vol. 6 dated 21st May, 1981 there is no doubt that by the above designation since, May 1981, the whole of Nnewi Local Government of Anambra State had been designated as urban area. In which case, the land in dispute is in an urban area which section 9(1) of the LUA, 1978 applies in respect of a Statutory Right of Occupancy. It is therefore wrong and fraudulent to say the least, for the appellant to have applied for Customary Right of Occupancy on the land in dispute which ordinarily falls within an urban area of the State.*

On the designation of an area as non-urban or rural, the LUA does not clearly state the procedure or features to be adopted in making such designation. However, for purposes of emphasis the Court of Appeal in the case of Amachukwu *v.* Ojukwu stated further that:

> *Any area of land in a State which has not been designated as urban area by the Governor ordinarily falls within the areas considered to be non-urban area, which is within the competence of the Local Government to grant customary right of occupancy.*

5. The Impact of section 3 of the Land Use Act on rural electricity access in Nigeria

This aspect of the paper argues that the import of the above pronouncement by the Court of Appeal is to the effect that the description as to what makes a particular location non-urban or rural in Nigeria is vague and not comprehensive. It only occurs by implication, that is, once an area is designated as urban, any other area not so mentioned or designated will, by implication, be non-urban or rural.

It is further argued that this provision can be used by any Governor of a State to deprive any particular location rural electricity access. For instance, as a result of political considerations, the Governor of a State may exercise this power negatively. He can, for the purpose of depriving a particular rural area rural electricity access, designate the area as an urban area. This may occur because there is no specific procedure or features put in place to determine what makes a particular location a rural area in Nigeria. A location is only deemed to be non-urban or rural if it has not been designated as urban by the Governor of a State. Thus by the provisions of section 3 of the

LUA the wrongful designation of a rural area as urban may severely affect the attainment of rural electricity in that area thereby depriving the people the benefit of having electricity in their locality. For instance, if there is a particular fund that ought to benefit rural areas for the improvement of rural electricity access, the negative application of section 3 of the LUA in designating that area as urban by the Governor of a State automatically deprives that locality of the funding for the purpose of improving rural electricity access. This occurs based on the fact that no specific feature or features has been developed in line with section 3 of the LUA for the Governor of a State to apply in the designation of an area as a rural one.

Similarly, it has been observed that directing policies to rural areas on the basis of informed knowledge is scarce in Nigeria. This to a large extent has been responsible for the poor and disjointed efforts at rural development[55] and also in the context of this paper, responsible for the poor development of rural electricity access in Nigeria. The designation of an area as non-urban or rural with specific features is vital in the purchase of land by investors for the construction of rural electricity projects towards the development of rural electricity access in Nigeria. This is based on the fact that section 118 of the EA 2023 is to the effect that acquisition of land and access rights for electricity projects in Nigeria, including projects related to generation, transmission, distribution and supply of electricity shall be through voluntary and compulsory land acquisition procedures in compliance with the provisions of the Act, the Land Use Act and the Commissions Acquisition of land Access Rights for electricity projects regulation. Where no specific feature exist in the LUA or is adopted for the designation of a location as rural, it may lead to uncertainty in the application process by the investor. This may also lead to the inability of stakeholders in the sector to properly measure rural electricity access developments in the country. In this regard, it has been stated that:

> *The current system of land administration under the Land Use Act is bereft of any clear and coherent policy direction. It is politically undemocratic, economically unproductive, but also socially segregative, particularly in its urban and non-urban dichotomy In view of the need to diversify the Nigerian economy, unleash the nation's potentials in the non-oil sector and enlarge access to land for the purposes of agriculture development and infrastructural investment in Nigeria, there is a need to streamline the extant land policy and administration in Nigeria.*[56]

From the above, it is clear that the provision of section 3 of the LUA is an impediment to the improvement of rural electricity access in Nigeria.

6. Suggested Recommendations for the Application of section 3 of the Land Use Act in improving rural electricity access in Nigeria

In order to address this situation this paper argues that geographically, it is safer to ascribe some common characteristics in determining what makes a particular location a rural area and some of these common characteristics are: (a) few people living in an area, (b) limited access to large cities, and (c) considerable travelling distance to market, work and everyday living activities.[57] It is these factors that should guide state governors and government agencies in designating a particular area

[55] Ignatius, 177
[56] Akintunde Otubu, "The Land Use Act and Land Administration in 21st Century Nigeria: Need For Reforms" *Afe Babalola J. of Sust. Dev. Law & Policy*, [2018] (9) (1) 108.
[57] Defining Rural-Geographic Terms and Concepts. The Rural Data Portal <http://www.ruraldataportal.org/geoterms.aspx> accessed 26th March 2019

as rural.[58] Some other features have also been developed to aid in ascertaining what makes a location rural and they include: (a) specific open land scape; (b) a relatively low population density; (c) the greater part of the population being associated with agriculture and forestry; (d) traditional lifestyle and habits; (e) extensive use of land for agriculture and forestry; (f) scarcity of built up areas and settlements that are dispersed; and (g) preponderance of inhabitants considering themselves as country dwellers.[59]"

Assuming some of these features stated above are adopted in determining a location as rural area, it will create a form of certainty that will aid in the measurement of rural access and it will also assist the Nigerian Government to track and carry out phased rural electricity access development as was the case in India.[60] This will also help investors in rural electricity access projects make informed decisions in the investment patterns they intend to adopt. We therefore recommend the following:

1. Section 3 of the LUA should be amended to include the features listed above for the purpose of ascertaining what makes a location rural area; and
2. Also for the purposes of rural electricity access, section 3 of the LUA may be open to liberal interpretation by the Supreme Court in line with the features developed in the designation of an area as a rural one, whenever it is called upon to interpret that section.

7. Conclusion

The need to enhance rural electricity access in Nigeria cannot be over-emphasised if the dream of attaining electricity for all in Nigeria will be attained. In this respect, this paper has adequately examined the concept of rural electricity access and how the poor rate of electricity access in rural areas has affected both the social and economic life of the country's rural population. It was observed in this paper that one of the challenges militating against the enhancement of rural electricity access is the issue of ascertaining what makes a location non-urban or rural. In this regard, it is clear that the combined effect of Section 3 of the LUA and the decision in the case of Amachukwu *v.* Ojukwu is to the effect that there is no particular features put in place to determine what makes a location non- urban or rural. Rather, what makes a place non-urban or rural occurs by implication. To this end, this paper recommends that Section 3 of the LUA should be amended to include certain features in the designation of an area as rural by a State Governor. Section 3 of the LUA should be open to liberal interpretation by the Supreme Court, in line with the features developed in the designation of an area as a rural one. In conclusion, it is hoped that if the recommendations above is adopted by policy makers, rural electricity access will be enhanced in Nigeria.

[58] Ibid
[59] Ignatius, 178.
[60] Definition of Electrified Village, <http://www.ddugjy.gov.in/portal/definition_electrified_village.jsp>accessed 20th March 2019.