EDITED BY

AKANMU G. ADEBAYO,
JESSE J. BENJAMIN,
AND BRANDON D. LUNDY

INDIGENOUS CONFLICT MANAGEMENT STRATEGIES

GLOBAL PERSPECTIVES

Indigenous Conflict Management Strategies

Global Perspectives

Edited by Akanmu G. Adebayo, Jesse J. Benjamin and Brandon D. Lundy

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Contents

SEVEN

Land Ownership in Nigeria

Land Use Act versus Customary Land Tenure System

Olusegun O. Onakoya

The issue of land ownership is a universal concept with its attendant socio-legal and economic implications. Land ownership has been variously defined as the total sum of rights accruing to an individual, group of people, the community, or government on a piece or parcel of land. However, in the practical sense, this definition has not really captured the age-old intrigues and disputes arising from issues on ownership of land, which sometimes do result in inter-ethnic wars and violent clashes among individuals and ethnic groups. The population in Nigeria keeps growing at an exponential rate while land is presumably fixed; hence there are usually bitter struggles among government, groups and individuals to control or claim ownership of fixed and scarce land. The Latin maxim *"quic quid plantatur solo solo cedit"* (meaning "he who owns the land owns everything beneath it, on the surface, and the air") makes matters more complex. Historically, the concept of state ownership of land was alien to the Nigerian legal system before the introduction of common law and consequently the enactment of the Land Use Act 1978. This chapter will focus on the raging conflict of land ownership in Nigeria after the enactment of this Land Use Act, and various methods by which citizens attempt to circumvent the provisions of the Land Use Act.

INTRODUCTION

Land in its natural form is a universal gift to humanity, and its importance cannot be over-emphasized. The enormous value attached to land

since creation stemmed from the fact that notwithstanding God's injunction to mankind to "be fruitful, multiply, and replenish the earth, and subdue it, and have dominion" (Genesis 1:28), there was no similar injunction for the increase and multiplication of land. Land, therefore, is universally acknowledged as a natural, but scarce resource.

The population in Nigeria, and indeed the whole world keeps increasing at epic proportions while the land is presumably fixed. The resultant consequence of the aforesaid is the bitter struggle for both ownership and possessory rights in land, which engenders conflict between individuals, groups of persons against the government, and sometimes one ethnic group against the other. The issue is made more complex in view of the description of the ownership of land, which states that "land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds" (Olawoye, 1974, p. 9). From the above definition, the principle encapsulated in the Latin expression *quicquid platantur solo solo cedit* (meaning literally "whatever is affixed to the soil belongs to the soil") applies to the definition of land in Nigeria. Nwabueze (1974, p. 3) further alluded to the previously mentioned when he defines land in the following words:

> It seems to be agreed even among laymen that land does not just mean the ground and its subsoil, but includes also all structures and objects, like buildings and trees standing on it . . . But the legal concept of land goes further than this and includes even abstract, incorporeal rights like right of way and other easement as well as profits enjoyed by one person over the ground and building as belonging to another. (p. 3)

Generally, in Nigeria the concept of individual land holding or state holding of the land (whether as the owner or trustee) is alien to the communal land holding system, as land is deemed to either be vested in the community or the family.

In the case of *Omoraka Ovie v. Onoriobo Kirhie* (1957) the court confirmed the above position as follows:

> The general law as it has been applied in all courts is that all land in Nigeria is communally owned in the area where they are situated and, except in certain well established circumstances, do not form the object of individual ownership.

The aforesaid was the position until the then-federal military government in 1978 promulgated the Land Use Decree which subsequently vested the land in the state. It is therefore against this backdrop that this chapter examines the issue of ownership of land in Nigeria, considering such elements as control and management of land, the duality of land tenure, Post-Land Use Act 1978 status of the communal land holding system,

compulsory acquisition of land, and the recurring problem of agitation of resource control in the Post-Land Use Act era.

This chapter also attempts to harmonize and reconcile the conflicting provisions of the Land Use Act 1978 with the realities of concepts of ownership and possession of land in present-day Nigeria.

HISTORICAL PERSPECTIVE

Historically, before the advent of British government in the geopolitical area which became Nigeria in 1861, the people from the major ethnic groups, namely the Yoruba (of the southwest), the Igbo of the southeast, and the Hausa (of the northern region) alongside different ethnic minorities scattered all over the nation operated land tenure systems which were indigenous to the people. Like other customs, norms, values, and traditions, the customary land tenure systems varied from place to place and were accepted as "a mirror of acceptable usage." This system, which evolved due to the long practice and acceptability among different ethnic groups, continued even after the advent of the British government notwithstanding the statutes enacted on land ownership.

For instance, in the geographical area that later became Nigeria, a number of ordinances were proclaimed in respect to the land policy of the government. These include the Native Lands Acquisition Proclamation 1900; the Native Lands Acquisition Proclamation 1903; the Crown Lands Management Proclamation 1906 as amended; the Native Acquisition Ordinance 1917; the Niger Lands Transfer Ordinance 1916; and the Crown Ordinance 1918 (Tobi, 1992).

The position in Northern Nigeria was not in any way different from what happened in the colony of Lagos; rather it revealed the direct assault on the natives, who were predominantly uneducated, by the colonial masters. In Northern Nigeria, following the revocation of the charter of the Royal Niger Company and the Proclamation of the Protectorate of Northern Nigeria, agreements were entered into between then-High Commissioner Sir Fredrick Lugard and representatives of the company under which all lands, rights, and easements were vested in the High Commissioner for the time being in trust for his Majesty, his heirs, and successors.

The Niger Lands Ordinance, 1916 of the protectorate was later enacted. However, still in a bid to streamline and clarify the land tenure system in the north, a committee was set up in 1908 which made far-reaching recommendations. The immediate effect of the committee's recommendation was the enactment of the Lands and Native Rights Proclamation 1910. Consequently, by operation of Section 2 of the proclamation, the whole of the lands of the protectorate of Northern Nigeria, whether occupied on the dates of the commencement of the proclamation

were declared native lands. However, in a bid to regulate and ensure a Uniform Land Tenure System in Nigeria, a major decree was promulgated in 1978 by the military government (Utuama, 1989).

RIGHTS OVER LAND

The expression "rights over land" refers to the extent of control exercisable over land. It also includes the right to use or enjoy a piece or parcel of land to the exclusion of others (Osamolu, Oduwole, & Oba, 2008). Per the law, land in its physical state is not capable of ownership, rather the subject of ownership consists of some rights to use and enjoy the land to the exclusion of other persons, which is recognized and protected by law. The law recognizes a twin bundle of rights in law, namely: (a) Ownership right and (b) Possessory right.

Ownership Rights

Stroud's Judicial Dictionary (1973) defines the term "owner" or "proprietor" in relation to land as a person in whom for the time being, a piece or parcel of land is beneficially vested and who has control, occupation or usufruct of such land.

The Black's Law Dictionary (1990) gives an elaborate meaning of "ownership" thus: ". . . collection of rights to use and enjoy property, including right to transmit it to others. The complete dominion, title or proprietary right in a thing or claim . . . The exclusive right of possession, enjoyment and disposal; involving as an essential attribute the right to control, handle or dispose."

The Court of Appeal in the case of *Abraham v. Olorunfunmi* (1991) per Tobi Justice of Court of Appeal (as he then was) gave a lengthy and comprehensive meaning of ownership in land thus:

> It connotes a complete and total right over a property. The owner of the property is not subject to the right of another person. Because he is the owner, he has the full and final right of alienation or disposition of property and he exercises his right of alienation and disposition without the consent of another party because as a matter of law and fact there is no other party's right over the property that is higher than that of his . . . .(p. 53).

He remarked further:

> The owner of a property can use it for any purpose; material or immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose detrimental to his personal or proprietary interest. Insofar as the property is his and inheres in him nobody can say anything. He is Alpha and Omega of the property. The property begins

> with him and ends with him. Unless he transfers his ownership over the property to a third party, he remains the allodial owner (p. 53).

The nature of right which ownership confers on proprietors or owners of land varies from jurisdiction to jurisdiction. For instance under English law, the concept of ownership of land is allodial in the sense that all land in England is vested in the Crown, while a subject of the Crown is only left with a right to occupy and use it for a period of time which may be finite or infinite. This right of use and occupation is construed by the doctrine of estate as ownership in favor of the holder. It may be safely asserted that in English Law, while a subject may hold an estate interest in land, ownership of physical land resides at all times in the Crown (Osamolu, Oduwole, & Oba, 2008).

In Nigeria, before the inception of the Land Use Act in 1978, ownership right, especially at customary land law, could last in perpetuity thereby vesting absolute ownership. However, the Act brought a radical modification to the nature of ownership rights in relation to land in Nigeria.

Radical or absolute ownership now reside in the Governor of the State in which the land is situated while Nigerians holding land are left with the right of occupation, use, or enjoyment for a certain time subject to a maximum period of ninety-nine years (in practice). Therefore, ownership is said to be absolute when it is subject only to those restrictions imposed by the law on all owners (Osamolu, Oduwole, & Oba, 2008).

Possession

Possession is the physical control a person exercises in relation to land. The right to possession of land may be lawful or wrongful. The lawful right to possession confers on the possessor the right to occupy and use the land and it is usually expressed as possessory interest. The interest is preserved by law. In this sense, it is a lesser degree of ownership and sometimes referred to as "limited ownership" (Utuama, 1989).

The term "possession" also has various meanings. According to *Earle C. J. in R v. Smith* (1855),

> Possession is one of the most vague of all the vague terms and shifts its meaning according to the subject matter to which it is applied varying very much in its sense, as it is introduced either into civil or into criminal proceedings (p. 554).

Possession is that bundle of rights that a person has over a piece of land. It connotes the direct physical relationship of a person to a thing; in this context, land. The incidents include such acts as cultivation, erection of a building or fence thereon, or demarcation with pegs or beacons. It is possible to be in possession through a third party such as a servant, agent or tenant (Osamolu, Oduwole, & Oba, 2008).

Under Roman law, possession attracts certain advantages; namely, possession was *prima facie* evidence of ownership and possession was the basis of certain remedies. Even a wrongful possessor was protected not only against the world at large, but also against the true owner who disposed him without due process of law; possession was an important condition in the acquisition of ownership in various ways (Dias, 1985).

COMMUNAL LAND TENURE SYSTEM

Nigerian Customary Law, as a body of rules accepted by its different people as binding on them, has evolved a land tenure system. The system is however not uniform in detail throughout the country. The existence of ethno-cultural differences accounts for the variation. Nonetheless, there are shared common broad principles from which the Nigerian laws are derived (Utuama, 1989).

Communal landholding has been asserted as the most remarkable principle of customary land law. Lord Haldane in *Amodu Tijani v. Secretary of Southern Nigeria* (1921) opined that land belonged to the community, village, or the family and never to the individual. This assertion has always been referred to, to buttress the principle of communal land holding. The decision of the court in *Amodu Tijani v. Southern Nigeria* (1921) has been criticized with respect to its assertion on non-existence of individual land holding under the customary law.

Tobi (1992) criticized Lord Haldane's observation as not only "too sweeping," but incorrect. He stated thus:

> It is submitted that the statement is too much of a generalization and therefore not much of certain indigenous systems of land tenure and particularly in Lagos where the case arose. The question of individual ownership of land was known to customary law in the country before the arrival of the British. It is therefore not correct, as claimed by His Lordship that even if such a system existed, it was as a result of contact with English ideas (p. 25).

It could therefore be rightly submitted that considering the family structure and its relationship to land before the advent of British, the whole idea of communal or family ownership emanated from individual ownership. The whole essence of the court's judgment in *Oragbade v. Onitiju* (1962), *Chukwueke v. Nwankwo* (1985), *Otogbolu v. Okeluwa* (1981), and a host of other cases is that land was originally owned by the individual and the concept of communal ownership of land was a later development.

However, it is instructive to note that modernization/urbanization and the force of socio-economic activities since independence have brought individual ownership of land into greater prominence.

LAND USE ACT 1978

The Land Use Act is no doubt one of the most revolutionary and controversial pieces of legislation ever passed in Nigeria. Since its inception, the control, usage, and management of land in Nigeria have radically changed from what it used to be.

The consequences of population pressure, urbanization, and socio-economic growth have great social and economic impact on land issues in Nigeria. Modernization saw people moving from the rural areas into urban centers where modern facilities are available.

Population pressure in cities and towns made residential accommodation in particular a problem in those places (Taiwo, 2011). The congested urban areas are in need of expansion, but land is scarce where this expansion is to be made (Yakubu, 1986). The growth of the Nigerian economy is due mainly to the discovery of oil which made a large number of people rich enough to build better houses and maintain large farms, which contributed to high demand for land in urban areas. Heavy and large industries were established and these brought about more demand for land and increased the exodus of people from rural to urban areas.

For government as well, land became so expensive and acquiring it for public purpose became very difficult and sometimes even impossible because of the cost of compensation (Yakubu, 1986). Also, the guarantee of a piece of land by the law to everyone was a problem. Consequently, the federal military government decided to act by looking into the problems of land distribution, usage, control, and management in the country.

Thus, in June 1977 the federal military government set up the Land Use Decree panel. The panel itself was based on the recommendation of the Constitution Drafting Committee (CDC), which was set up in January 1976 to nationalize all undeveloped lands in Nigeria in a bid to allow the landless to acquire land for shelter and sustenance (Oluyede, 1994).

The reports of the panel culminated in the enactment of the Land Use Act 1978. The Land Use Act sets out the frameworks for a national land policy in Nigeria. In the case *Institute of Medical Research v. National Union of Road and Transport Workers* (2010) the court held that the Land Use Act is an existing law by virtue of section 35(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The Act is a special federal enactment, which has been accorded extraordinary status by the constitution. Though it is not an integral part of the constitution, it claims special protection under section 9(2) of the constitution (as amended).

According to Taiwo (2011), land, which is one of the factors of production, has become a factor for constant litigation, bickering, attacks, deaths, and violence in different communities in Nigeria, catching national attention. Hitherto, the land tenure law and the general law were in operation in the northern part of Nigeria. The various customary methods of holding land, together with its disputes settlement mechanism, existed in the

southern part of Nigeria too. However, in order to solve the intractable problems relating to land, the Land Use Act was promulgated.

Four main objectives have been identified as the reasons for enacting the Act, and they are:

1. To remove the bitter controversies resulting at times in loss of lives and limbs, which land is known to be generating;
2. To streamline and simplify the management and ownership of land in the country;
3. To assist the citizenry irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life; and
4. To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitating planning and zoning programs for particular use. (Omotola, 1984)

However, while the Act has been in operation for over three decades now, the enthusiasm and euphoria, especially from workers and individuals, have died down. The majority of the populace has come to the realization that the Act has caused a lot of problems and created a great complexity in the land transactions in the country (Taiwo, 2011).

The objectives of the Land Use Act have remained largely unfulfilled thirty-five years after its enactment and title to land appears to be more insecure now than it ever was. The deficiencies of the Land Use Act were aptly summarized by Justice Augustine Nnamani who as attorney-general was responsible for drafting of the Act and its incorporation into the constitution. He stated thus: "in the course of these years, it has become clear that due to its implementation not its structure or intendment, the objectives for which the Land Use Act was promulgated have been distorted, abused, and seriously undermined (Olayiwola & Adeleye, 2006).

SCOPE, CONTROL, AND MANAGEMENT OF LAND

The Land Use Act creates a tripartite system of landholding in Nigeria; namely state, federal, and private/individual landholding systems pursuant to the provisions of Sections 1 and 49 of the Land Use Act, Cap L5 LFN 2004. Section 1 of the Act vests the title of land comprised in the territory of each state and held in trust by its governor and administered for the benefit of every Nigerian. The exact import of the provision of Section 1 of the Land Use Act has attracted divergent interpretations from judicial authorities and textbook writers. It has been suggested that the word "vest" in the provision implies the vesting of ownership (Abugu, 2008).

Nwabueze (1993) submitted that the declaration/vesting is a mere window dressing and incantation to disguise the takeover by the state of

the beneficial ownership of all land in the country and portray it as a socialist measure with a social justice objective in line with the recital in the preamble. The intention is to assure all Nigerians the right to use and enjoy land in their country.

The tenor of the provision of Section 1 of the Land Use Act presupposes that there were some lands in each state which were not intended to be vested in the governor of the state. One such exception is all land, which immediately before the commencement of the Act was vested in the federal government (Taiwo, 2011). In this regard, Section 49 of the Act exempts the management and control of land held by the federal government or any of its agencies from control of the state governor. The section provides:

> Nothing in this Act shall affect any title to land whether developed or underdeveloped held by the Federal Government at the commencement of this Act, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.

Control and Management of Land

Section 2(1) of the Act provides:

a. All land in urban areas shall be under the control and management of the Governor of each state; and
b. All other land shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.

Section 2(5) of the Act, similarly established for each local government, a body to be known as "the land Allocation Advisory Committee," which shall consist of such persons as may be determined by the governor acting after consultation with the local government and shall have responsibility for advising the local government on any matter connected with the management of land in a non-urban area.

Section 2(2)(c) of the Act further provides that the Land Use and Allocation Committee shall have responsibility for determining disputes as to the amount of compensation payable under the Act for improvement on land.

Unfortunately, Section 47(2) of the Act ousts the jurisdiction of the court on the issue concerning the amount or adequacy of compensation payable. It provides thus:

> No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.

It is submitted that Section 47(2) constitutes an ouster clause, and therefore a clear breach of access to court as enshrined in Sections 1(1) and (3),

6(6)(b), and 36(1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) which makes it *void ab initio* to the extent of its inconsistency.

Compulsory Acquisition of Land

Compulsory acquisition of property is another variant of revocation as provided for by the law. Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit the society. Compulsory acquisition is commonly associated with the transfer of ownership of a piece/parcel of land in its entirety. This may occur in large-scale projects (e.g., construction of dams or airports) as well as in smaller projects (e.g., construction of hospitals, schools).

Iluyomade (1980), justifying the government act of compulsory acquisition of land, stated thus:

> It is not only in the agricultural sector that land is of importance to Nigeria. The discovery of mineral oil and other useful minerals has quickened the pace of explorations for more deposits on land belonging to indigenes and usually held under customary tenure. Industries are springing up everywhere and government has a deliberate industrialization policy. Land must be acquired for the sites of factories . . . hospital, schools, better recreational facilities, and these and many other facilities have to be provided; but first, there must be a law. (p. 7).

It appears that Section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) gives a tacit support to the act of compulsory acquisition of property. The section provides thus: "no moveable property or 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 matter and for the purposes prescribed by a law."

The Public Land Acquisition Law of Western Nigeria (1976) empowers the government to acquire compulsorily land when required for public purposes. Such purposes include: (a) exclusive government use for general public; (b) for or in connection with sanitary improvements of any land, including reclamations; (c) for or in connection with the laying out of any new township or government station or the extension or improvement of any existing township or government station; (d) for obtaining control over any land contiguous to any port; (e) for obtaining over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government; (f) for obtaining control over land required for or in connection with planned rural development or settlement; and (g) for or in connection with housing estate, economic, indus-

trial, or agricultural development and for obtaining control over land required for or in connection with such purposes.

The Supreme Court in the case of *Ibrahim v. Mohammed* (2003) emphasized that where a person's title to land is revoked, it should be done for public purpose and/or for public interest.

The Land Use Act and the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Section 44) provides for compensation for land/property compulsorily acquired (Nuhu & Aliyu, 2009). The compulsory acquisition of land has always been a delicate issue and is increasingly so nowadays in the context of rapid growth and changes in land use. Governments are under increasing pressure to deliver public services in the face of high and growing demand for land. Many recent policy dialogues on land have highlighted compulsory acquisition as an area filled with tension (Food and Agriculture Organization (FAO), 2008).

Overriding Public Interest

Section 28 of the Act provides that:

1. It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
2. Overriding public interest in the case of a statutory right of occupancy means:
    a. The alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of the Act or of any regulations made thereunder;
    b. The requirement of the land by the Government of the state or by a Local Government in the state, in either case for public purposes within the state, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
    c. The requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

It is important to note that where a land held under the Act is revoked for overriding public purpose, such land must be utilized only for the good of the general public. The Supreme Court stated in *Ereku v. Military Governor Mid-Western State* (1974) as follows: "Where government ostensibly revoked land for public interest but subsequently the land is diverted for private use, such revocation is bound to be declared null and void for reason of not complying with the provision of the Land Use Act.

The acquiring authority cannot rob Peter to pay Paul by divesting one citizen of his interest in a property and vesting same in another (p. 61)."

The Supreme Court further emphasized this position of law in *Osho v. Foreign Finance Corporation* (1991) where it stated thus:

> To revoke a statutory right of occupancy for public purposes, the letter and spirit of the laws must be adhered to. Since revocation of a grant deprives the holder of his property right, the terms must be strictly complied with and strict construction of provisions made.

In *Joshua Oto v. J. M. Adojo* (2003) the court in a very clear and sweeping statement condemned the purported compulsory acquisition of the plaintiffs' land:

> It was not in the public interest for a man to wake up one morning only to find out that someone else has acquired title over his house without his knowledge. I do not see how this can be justified except in a situation of anarchy . . . Under the Land Use Act, the Governor of a State has extensive powers to compulsorily acquire land situated within the state for overriding public interest . . . Any revocation for purposes outside this, even though ostensibly for purposes connected to the one prescribed by the Land Use Act is against the policy and intention of Land Use Act, and can be declared invalid and null and void by a competent court of law (p. 54).

It is instructive to note that there are a plethora of cases which dealt with revocation or sometimes compulsory acquisition of land without recourse to the due process of law or for personal purpose as against the overriding public interest. The aforesaid act of the governors has obviously defeated the whole essence of land preservation under the Act for the benefit of Nigerians as clearly spelled out in the preamble to the Act.

The preamble to the Act states,

> Whereas it is in the public interest that the right of all Nigerians to the land of Nigeria be asserted and preserved by law; and whereas it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereto in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved (p. 1).

DUALITY OF LAND TENURE SYSTEM

Nigerian jurisprudence recognizes five main sources of Nigerian law. These are received English law, Nigerian legislation (e.g., Land Use Act), case law, customary, and Islamic law. However, the two major land tenure systems recognized by law are (a) customary land tenure system in the pre-Land Use Act era and the land tenure system created by the Land Use Act in the post-1978 era. Karibi-Whyte, J. S. C. (1991) in *Abioye &*

Others v. Yakubu & Others summed up the continued existence of customary land tenure in the post Land Use Act 1978 in the following words:

> A person with a customary right of occupancy is entitled to use the land in accordance with customary law. A customary right of occupancy predates the Land Use Act and is intimately linked with the custom of the people of the area. It is a creation of customary land and the fact that it can now be granted by the Local Government has not taken it out of the realm of customary law. The total quantum of interest contained in the right of occupancy has to be determined by the customary law of the area, with rights of other persons in the land (p. 130).

The learned judge stated further that:

> The conclusion therefore is that on the commencement of the Land Use Act all those entitled to certificate of occupancy under the Act ceases to hold their occupancy under any law but under the Land Use Act. More importantly, no person can create interest in land except the Governor or Local Government. The consequences of existing tenure of this construction which turns every tenant, sub-tenant of a landlord into his own landlord making him subject to the Governor or Local Government only is incalculable. If it was so intended, it would have said so expressly. This could not have been the intention of the Act (p. 130).

POST-LAND USE ACT STATUS OF COMMUNAL LAND

The pre-existing land tenure and its principles which are in conformity with the spirit and general intendment of the Act are saved. Thus Section 48 enacts that,

> All existing law relating to the registration of title to, or interest in, land or the transfer of title to any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws in conformity with this Decree or its general intendment. This appears to mean that any principle of pre-existing tenures that is inconsistent with the provisions of the Act is void to the extent of its inconsistency due largely to its constitutional status (Utuama, 1989).

a. The concept of absolute ownership has radically changed from what it used to be before the enactment of the Act. Section 1 of the Act, as earlier noted, vested the title to all land comprised in the territory of each state in the governor. Accordingly, every existing tenure has been devoid of the concept of absolute ownership.

In its place is the concept of right of occupancy. Therefore, claimants of absolute ownership or the fee simple either under customary law, the received English Law, or the system of registration of title may now have rights of occupancy under Sections 34 or 36. Thus an individual commu-

nity who hitherto held the absolute ownership is now entitled to a right of occupancy.

Accordingly, in respect to proceedings for the determination of who is entitled to title in land, the court is empowered to dispose of the question but any order of the court shall be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary in respect of such land (Utuama, 1989). However, communities particularly in the rural areas are yet to come to terms with the reality, as such communities still believe that ownership of land in their territory is absolute in the real sense of the word.

b. In respect to alienation of land, the principle is largely preserved. However, such alienation whether by purchase or otherwise must be with the appropriate consent under the Act. For instance, in relation to family property, where the consent of the family head and the principal members is a prerequisite for alienation, the consent of the appropriate authority must in addition be sought under the Act. But non-urban land subject to Section 36 is not alienable.

However in practice, members of the public now tend to circumvent this position of law due to the difficult process of obtaining the consent of the appropriate authorities and sometimes the fee such exercise attracts. The provisions of Sections 36(5) and (6) appear not to be operative, in view of flagrant disobedience and non-compliance by rural dwellers and sometimes members of the public in general.

Sub-sections (5) and (6) provide as follows:

5. "No land to which this section applies shall be sub-divided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid."
6. "Any instrument purporting to transfer any land to which this section relates shall be void and of no effect whatsoever in law and every party to any such instrument shall be guilty of an offence and liable on conviction to a fine of N5, 000 or to imprisonment for one year."

c. The institution of customary tenancy appears to be preserved together with its incidents. This view may not be correct in respect of land subject to section 36(2) of the Act where such land is in non-urban areas, and was subject to customary tenancy and the customary tenant has been using it for agricultural purposes at the time of commencement of the Act. By virtue of the provision, the tenant qualifies as an occupier to be the one entitled to the customary right of occupancy deemed granted under the provision; consequently he holds of the appropriate local government not as a "tenant" but as a "holder" (Omotola, 1984).

It is very significant to note at this juncture that notwithstanding the nationalization of land in Nigeria through the introduction of the Land Use Act, conflicts bothering on land ownerships pervade every region in Nigeria from the north to the south (southeast, south-south, and southwest) of Nigeria. Agitation for use of land and resource control has remained a focal issue in Nigeria.

RECOMMENDATIONS

In view of all the issues addressed in this chapter, the following reforms are recommended:

1. The Act should be removed from the constitution so that amendments could be easily effected. Section 5 of the Constitution of Federal Republic of Nigeria (as amended) makes the constitution and its provisions to be subjected to cumbersome procedure of amendment.
2. Section 28 of the Act which deals with the powers of revocation of the title should be reviewed, as it has lent itself to abuse in the hands of greedy and power-drunk governors.
3. The alienation/transfer of land under different native laws and customs should be preserved, at least in the rural areas, without being subjected to bureaucratic bottlenecks of seeking and obtaining the consent of the local government.
4. The traditional rulers and chiefs in various communities should be empowered and adequately equipped to settle disputes arising over land ownership among the natives. This will prevent protracted litigation in courts, clashes among the natives, and inter-ethnic conflicts.
5. Government as a matter of urgency should adopt the alternative dispute resolution mechanism in settling conflicts on land disputes.

Finally, the principle of *quic quid platantur solo solo cedit,* which is supported by the natural law, should be encouraged. The communities which are endowed with certain mineral resources should be allowed to make maximum use and benefits from the said resources, while tax should be paid to the federal government. This, it is submitted is fair, just and equitable.

CONCLUSION

As earlier noted, different ethnic groups and communities owned, controlled, and administered the use of land in their territories effectively before the introduction of Land Use Act. Since early settlement by the

natives, whether by way of gifts or conquests, was the usual source of land ownership, such lands were usually made available to families and members of the community for farming and other sundry use in line with the existing tradition.

The administration and control of land were the exclusive preserve of the family head or communal head/chiefs that normally held such land in trust for members of the family and communities, hence their adjudicatory role in case of conflict among its members. However, upon the introduction of the Land Use Act and consequent nationalization of the lands in Nigeria (both at the rural and urban areas) disputes relating to land holding and occupancy are referred to the State High Courts and Customary Courts, respectively.

Section 39 of the Land Use Act provides inter alia that:

1. The High Court shall have exclusive original jurisdiction in respect of the following proceedings:-

    a. Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of occupancy;
    b. Proceedings to determine any question as to the persons entitled to compensations payable for improvements on land under this Act.

The Land Use Act has brought with it greater confusion and complexities into land use and management in Nigeria, contrary to its objectives at inception. The effects of the Act thus bear no relation (beyond being predominantly in the reverse direction) to the supposed objectives of rational intervention in customary tenure (Francis, 1986). The main effect of the Act was to change the relationship between landowners and tenants, introducing uncertainty, insecurity, and conflict.

Otherwise, the consequences of this potentially radical legislation were rather slight. Whatever the correct interpretation of the Act's provisions on customary tenure, the allocation of land for houses continued as before, as did practices such as the division of land among segments of descent groups. The sale of land, although it had never been very common in Nigeria, also continued (Francis, 1986).

The adjudicatory process of settlement of disputes arising from land matters is yet to be fully addressed, in view of the duration it takes for the English-type court system to resolve such disputes considering the fact that most witnesses and parties to the dispute would have died before the completion of land cases in law courts.

It is equally important that out of the five ways established by the Supreme Court in the celebrated case of *Idundun v. Okumagba* (1976) for establishing ownership of land, the traditional method, which is commonly used, is yet to be properly entrenched and its effectiveness determined.

The presiding judge relied mainly on the sequence or logic of presentation of history of ownership of land by the parties and their witnesses; in most cases they are not conversant with such history unlike the Chiefs. This often leads to wrong evaluation of evidence before the court and consequently miscarriage of justice. The Supreme Court of Nigeria in *Idundun v. Okumagba* (1976) laid down five ways by which ownership of land could be established. The five ways are:

1. Traditional evidence;
2. Production of documents of title duly authenticated and executed;
3. Acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference of true ownership;
4. Acts of long possession and enjoyment; and
5. Possession of contiguous or adjacent land.

It is significant to note that all the methods mentioned above save number (2) fall under history of the land, which in most cases pre-dates the Land Use Act. Chiefs, headmen and or traditional rulers who are custodians of norms, customs, and history of their people are sufficiently equipped to adjudicate over dispute or conflicts arising from ownership of land, in the rural areas, not the Western type of courts. It is therefore suggested that the regular courts continue to adjudicate over disputes arising from ownership of land in urban areas while the customary courts comprising of the chiefs, headmen, community leaders, and traditional rulers adjudicate over the dispute arising from ownership of land in rural areas.

A very recent example was the communal clash between two communities in Kwara State of Nigeria in January 2013, namely, Offa and Erin-Ile caused by land ownership which has defied resolution over four decades for failure to adopt traditional mode of settling disputes.