

## LAND TENURE SYSTEM AND NATURAL RESOURCE CONFLICT IN NORTH EAST OF NIGERIA

THANKGOD, DASO CHRISTOPHER<sup>1</sup>, RUFUS, ANTHONY<sup>2</sup> & DAVID E. EYO<sup>3</sup>

<sup>1</sup>PhD Research Student, Department of Political and Administrative Studies,  
University of Port Harcourt, Nigeria

<sup>2</sup>PhD Candidate, Department of Political Science, Niger Delta University  
Wilberforce Island Bayelsa State, Nigeria

<sup>3</sup>B.Sc Political Science, Niger Delta University, Bayelsa State, Nigeria

### ABSTRACT

Having access to land in Nigeria has remained a source of concern to many. Land is central to development and the exploitation of other natural resources. That is why nations over the world have each developed its land tenure system so as to deal with the challenges that may arise from the exploration of land as a basic natural resource. The challenges of land tenure system have contributor to food insecurity and restricted access to essential social development. This paper identified critical and priority land issues as it regard land tenure system and natural resource conflict in Northeast Nigeria. It also looked at the various Land tenure systems that have been operational in Nigeria prior to the colonial era, to the colonial period and post-colonial era. It specifically held that, the 1978 Land Use Decree was a game changer in the area of land ownership in Nigeria. That notwithstanding, there is sufficient evidence that, the 1978 Land Use Act needs to be reviewed in order to meet up with the basic objective of land for all.

**KEYWORDS:** Land Tenure, Exploitation, Decree, Natural Resources, and Development

### INTRODUCTION/STATEMENT OF THE PROBLEM

Customarily, land tenure is frequently considered to be an impediment to agricultural development. The near absence of a secured and clearly defined right usually leads to a disincentive or the lack of ability to invest in agriculture, while the non-malleability of traditional systems is said to prevent the transfer of title rights between groups and individuals, thus inhibiting the free flow of factors of production (Francis, 2015). Land tenure system has been defined in different ways, however, Olawoye, (1974), defined the land tenure system in Nigeria to mean “the body of rules which govern the access to land and the relationship between the holder of the land and community on the other hand or between the holder and another party”. The Food and Agriculture Organisation of UN (2002), further defines it as “that relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land”. (For convenience, “land” is used here to include other natural resources such as water and trees.) Land tenure is a set of rules invented by societies to regulate behaviour. It defines how property rights to land could be allocated within societies, in terms of use, control, and transfer of land, as well as the associated responsibilities and restraints. In simple terms, land tenure systems show that can use what resources, for what period of time and to what purpose could it be employed for.

This paper used case study in data collection and analysis. The use of case study enabled the researcher to compare various land laws in Nigeria against the 1978 Land Use Act which unified the various Land Acts since 1868. It

also sought to answer the following research questions:

- How does land system encourage resource development
- Has the 1978 Land Use Act brought reliefs to land development in Nigeria

The land tenure system of a given society defines the manner in which land can be owned, possessed and expropriated. It comprises an institutional framework wherein decisions are taken about the use of land, embodying within it the legal or customary arrangement through which individuals, groups or organizations can gain access to the economic and social opportunities available through the use of land. Udoekanem *et al* (2014) believed that, land tenure system is made of rules and procedures that govern the rights and responsibilities of both individuals and groups in the acquisition, use and control of land. They argued that all societies of whatever culture and social formation have land systems interwoven with property rights. These property rights lend form to the proprietary land units (Chubado, 2014).

The proprietary land unit is that decision-making unit which is fundamental to all positive decisions about land use. It is comprised two elements viz, the run of property rights and the area of physical land to which they control (Udoekanem, 2014). Any land system may portray categories of estates or rights in land. These rights in land could be absolute or non-derivative interests and derivative interests. The absolute interests are those rights in land that confer upon their holders a degree of unconditional interests in perpetuity and quality. It is regarded as the most superior form of ownership. Additionally, it confers absolute ownership rights and as such allow for the highest scope of proprietary decisions as to the management of land (Olawoye, 1974). The derivative interests on the other hand as the name implies, are interests that have been derived or carved out from the larger estates or superior estates. They are inferior in quality and include articles such as leaseholds, life interests, kola tenancy, mortgage, borrowed interests and pledges (Udoekanem, 2014 and Olawoye, 1974). It is important to note that, the land ownership structure in Nigeria is based on the absolute and derivative interests. The structure of ownership of these interests in Nigeria has evolved through three major periods. These are the pre-colonial, colonial and post - colonial periods. This paper therefore examined the various dynamics of land tenure system in pre - colonial and post - colonial Nigeria. It further looked at how land ownership has been an albatross to social, political and economic development of Nigeria with regards to the Land Use Decree 6 of 1978 as Amended.

## 1.2. THEORETICAL FRAMEWORK

The theoretical under pin for this research endeavour is the **realistic conflict theory**. The theory states that whenever there are two or more groups that are seeking the same limited resources, this will lead to conflict, negative stereotypes and beliefs, and discrimination between the groups. The conflict can lead to increasing animosity toward the groups and can cause an ongoing feud to develop.

Conversely, conflict, negative stereotypes and beliefs, and discrimination between groups can potentially be reduced in situations where two or more groups are seeking to obtain some super ordinate goals. **Super ordinate goals** are mutually-desirable goals that cannot be obtained without the participation of two or more groups.

The theory is relevant to this study in the sense that it unravels the effect and tendency of the land tenure system to invoke conflict thus, drawing a correlation between the land tenure system and conflict in the North East.

Because of its emphasis on group behaviors and conflict, the realistic conflict theory is also referred to as the **realistic group conflict theory**

### 1.3. DYNAMICS OF LAND OWNERSHIP IN NIGERIA

The major land tenure system in Nigeria during the pre-colonial period was the customary land tenancy that vested land holdings on the villages, towns, communities and families. Land was thought not to be owned by individuals but by communities and families in trust for all the family members (Omuojine, 1999). The proprietary estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family with ancestral history, have few living individuals and countless members yet unborn. Thus, individuals had no such personal interest as the actual ownership of land or absolute interest was vested in the community itself. Individual interests or rights in community land were derivative interests.

Udoekanem *et al* (2014) and Francis (2015) stated that, the customary land tenure system in the areas comprising the Southern States of Nigeria before colonial rule was held in the following ways:-

- Communal Lands
- Stool or Chieftaincy lands
- Family lands
- Individual or Separate property

The community lands comprised lands which the entire community has proprietary interest. Such community lands were controlled and managed by the chiefs and traditional rulers. The stool or chieftaincy lands were commonly found among the Yoruba's of the Southwest and comprised the Oba's palace and the surrounding lands. The family lands were lands such lands that were vested in the members of the family as a corporate group. Individual or Separate property comprised lands whose title was vested on individuals and was obtained by partitioning the family land to individual members of the family on trust. This made the sale of land within this period difficult to be sold or alienated. Such an act was generally considered as capable of depriving the future generations of the opportunity to acquire land.

Conversely, in the Northern part of Nigeria, following the Fulani Jihad in the 19th century, a quasi-feudal pattern was advanced. This system made the Emirs to claim ultimate title to land, with fiat (holding of land parcel in return for services) holder (Chubado, 2014, Loimeier, 1997). This served as a precursor to the 1900 Land Proclamation Act and other Acts, which declared all native lands in the region with only minor exceptions to be colonial lands, were vested in the commissioner responsible for land matters as trustee for the people of the region. As the Colonial Annual Report of 1910 stated, "most of the land in Northern Nigeria is open, well drained, and free from high bush. We have practically a tabula rasa to work upon, and the task of laying out new towns is, in most cases, an easy and very interesting one". Chubado (2014) noted that, before March 1978, land holding in the northern states of Nigeria had been governed by. The Land Tenure Law of 1962. The 1962 Land Tenure Law had the vestiges of its predecessor, which is The Land and Native Right Ordinance which was introduced in the protectorate in 1916, as a result of the recommendations of Northern Nigeria Lands Committee. The Land and Native Rights Ordinance had declared all land in Northern Nigeria to be under the control and subject to the disposition of the Governor. Such lands were to be held and administered for the use and common benefit of the Natives of Northern Nigeria. This paved the way for land titles to be owned by the state and rights of occupancy given to prospective beneficiaries. The state governor was thus, enabled to grant and revoke such rights of occupancy and to demand rents. In exercising the powers conferred upon him by the law, the governor, however, was to have due regard and

consultation to the native laws and customs existing in the district in which such land is situated. It is pertinent to state that, as provided for by Section 4 of the Land Tenure Law of 1962, citizens were entitled to statutory or customary right of occupancy in such land.

#### 1.4. 1978 LAND USE DECREE

Land reform implies an assumption that there are issues within the current land management system that should be addressed. Some problems serves as momentum for change to positively bridge gaps in access to, and use of land in Nigeria while others seek to regress the trend as Table 1 shows. It is a fact that one of the problems faced by some Nigerians is that of landlessness. This is obviously tied to poverty or low economic status. Beyond landlessness even for those who hold or possess land, many do not have secured title to the land. Legal title to the land may not be available or forthcoming.

In essence, one obstacle to land management is the issue of right to land or little of land. Having access to land in Nigeria has remained a source of concern to many. The World Bank (2014) report shows that, while it takes twelve days and fifteen day for land titles to be registered in Rwanda and Botswana respectively, it takes seventy – two days for same land to be registered in Nigeria. Also, the cost of land registration in Nigeria stands at 20% of the land value. This figure, the World Bank noted is outrageous when compared registering the same value in Rwanda which is 0.2%, in Ghana it is 1.2%.

**Table 1: The No of Procedures, Time and Cost of Registering Landed Title in Nigeria as Compared with Those of Some Countries in Sub – Saharan Africa**

| Country       | No of Procedures | Time (Days) | Cost (% of property Value) | Global Rank in Registering Propery |
|---------------|------------------|-------------|----------------------------|------------------------------------|
| Ghana         | 5                | 34          | 1.2                        | 49                                 |
| Garbon        | 6                | 103         | 10.5                       | 166                                |
| Cote d'Ivoire | 6                | 42          | 10.8                       | 127                                |
| Nigeria       | 13               | 77          | 20.8                       | 185                                |
| Niger         | 4                | 35          | 7.0                        | 69                                 |
| Rwanda        | 3                | 12          | 0.2                        | 8                                  |
| Seychelles    | 4                | 33          | 7.0                        | 69                                 |
| Botswana      | 4                | 15          | 5.1                        | 41                                 |
| South Africa  | 7                | 23          | 6.1                        | 99                                 |
| Egypt         | 8                | 63          | 0.7                        | 105                                |

**Source:** World Bank (2014)

However, over the years Nigeria has reaped her land and the natural resources there on with insufficient care for the livelihood and well-being of her future generation (Chubado, 2014).It should be noted as posited by Obioha (2008) that, in essence, before the advent of the *Land Use Act in 1978*, the control and administration of land in Northern Nigeria was governed by the *Nigerian Land Tenure Law 1962*. However, a different scenario unfolded in Southern Nigeria. Certain features characterized the period before the introduction of the *Land Use Act*. They included increased demand for land, subsequent increase in the price of land, rise of land speculators with corrupt tendencies, land fragmentation and redistribution encouraged by the customary land inheritance where land devolves to beneficiaries on the demise of the former owner or holder, exorbitant cost of land acquisition affecting government plans and projects with respect to development, multiple and dubious sale of the same land to different people resulting in litigations.

The land Use Act of 1978 primarily nationalized the control of lands all over the Federation. It gave the power of

control over land in the Governor of the State (Francis, 2015). The Act was principally intended to make land more accessible for private and public use. It made communities and individuals to have rights of use only. The act thus, vested all lands in the territory of the state in the governor to be held in trust and to be administered for the use and common benefit of all Nigerians. Section 34(5) of the act unambiguously empowers state governments to dissolve private rights in individual undeveloped land holdings in excess of 0.5 hectares and take them over without compensation if it is intended for public purposes (Conroy, 2014).

Oluwamotemi (2015) notes that, the 1978 Land Use Decree brought about a single and unified system which aided in putting to an end the disparity in land ownership system between the North and the South. In addition to creating a unified land tenure system, he noted that, it established Statutory Lands [Urban Lands] – Statutory Right of Occupancy

- Customary lands [Rural lands] – Customary Right of Occupancy.

In addition, With the Land Use Act the following objectives were intended to be achieved:

- Access to land by investors and individuals for various uses is easy.
- Every part of the country has a common Land Tenure System.
- Government controls the use of land.
- The issue of acquisition of land, compensation and resettlement is made easy

Perhaps the most important aspect of the 1978 Land Tenure Act according to Oshio (1990) is in its preamble which provides that "Whereas it is in the public interest that the rights 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 thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved."

### **1.5. 1978 LAND USE DECREE: A VICIOUS CYCLE AND THE NEED FOR REFORM**

It has been shown that the letters of a statute are not inherently sacred but their ability to accomplish the desired goals depends largely on the willingness and will power of the operators (Oshio, 1990). Ironically, within the space of 3 decades of its promulgation, the operation of the Act has encountered the same pitfalls as its predecessors. Speculative dealings in land, racketeering and profiteering are now rife. This has led to an increase in the "prices" of land (Conroy, 2014). It has gotten undercut dealings with government functionaries and their close allies have also returned to the business of distributing land among themselves, thus resuscitating the ills of the state land system.

The conflict between the operation of the Act and the indigenous land tenure, and the consequent confusion created by the divergence of opinion among judges, lawyers, and laymen on the true effect of the Act on the indigenous land tenure cannot be emphasised (Loimeier, 1997). This can be attributed to the fact that, although the Act seems to recognize the indigenous land tenure system, it falls short of making clear and adequate provisions for it. Another problem that can be deduced is the transitional provisions of the Act, which does not set deadlines for the conversion of formerly indigenous titles into rights of occupancy. Consequently, this creates the impression amongst indigenous title holders that they are free to deal with their land or alienate it in accordance with customary law even in disregard of the rights of occupancy system (Francis, 2015). Accordingly, there is no doubt that there is need for reform is urgent. To actualise this,

the researcher proposes two alternative reforms. The first is the amendment of the Land Use Act to make for clearer provisions for the indigenous land tenure system in order not to leave everything to mere implication, as it is presently the case under the transitional provisions of sections 34 and 36. This can be achieved by setting deadlines for the conversion of pre-existing indigenous titles into rights of occupancy with the holders getting certificates of occupancy. The second proposal is an amendment of the Act to expunge the indigenous land tenure system from the operation of the Act. This effect of this will be giving the latter the rights of occupancy system without the present problems of interpretation (Udoekanem *et al.*, 2014).

## 1.6. NATURAL RESOURCE CONFLICT IN NORTHEAST NIGERIA

Several scholars have noted the importance of land as a natural resource to the economic, social and political development of Nigeria. For example, Conroy (2014) notes that “Nigeria is a country rife with conflict, and disputes over land issues constitute a significant number of conflict events and the violent deaths that result from them”. Land issues vary from region to region, although there are some cross-cutting themes; pastoralists and farmers in the north and Middle Belt, clashes between communities and oil companies in the south-south and south-east, and urban and semi-urban conflicts in major cities are all affected by politics, legal issues, and possibly, by climate change (Obioha, 2008).

There is no gainsaying the fact that, Conflicts surrounding land issues in Nigeria are multi-faceted and complex, with dynamics that change over time and depending on the area of the country where they occur. More so, as noted by Obioha (2008), climatic change has had a rather adverse effect on the scarce land resources. The earth’s constant warming and heating has affected many parts of Nigeria, especially those in the Northern hemisphere of the country, which are located far away from the cooling effect of the sea along the coastline down the south. As a result of this, the region has been experiencing drastic and continuous climatic change characterized by reduction in rainfall, increase in the rate of dryness and heat and scourge of desertification (Fasona and Omojola, 2005). The north eastern part of Nigeria which was mainly a Sudan Savannah is increasingly becoming an arid environment at a very fast receding rate, estimate of about 0.6 kilometres per year occasioned by the fast depletion in the amount of surface water, flora and fauna resource on the land. Land cover changes are indeed important index of climate change within Nigeria and other countries of the world (Chubado, 2014). The consistent reduction in rainfall leads to a reduction in the rate of natural regeneration of land resources, which causes a chain of causal reaction that, makes people to explore and exploit more previously undisturbed lands, thus leading to the depletion of the forest cover and increase in the sand dunes/Aeolian deposits (Obioha, 2008). The strong and worrisome increase of 425% in the extent of sand dunes/Aeolian deposits between 1976 and 1995 is a strong pointer to land resource loss due to climate change (Fasona and Omojola, 2005) and possibilities of desert encroachment around the northern axis of Nigeria.

## 1.7. CONCLUSIONS

This research paper has examined the concept of land ownership in Nigeria. It looked closely at the various ways land was administered prior to the 1978 Land Use Decree. Though the Decree signalled the dawn of a new era in land administration in terms of making land available for both commercial and private use, it also paved the way for land usurpation especially by the government who now controls land. This gave the impression that, the indigenous land owners are being deprived of their rights to their natural resources. As already stated, the decree gave the governor of the state and by extension the government of the state the sole right to issue certificate of occupancy, which is the sole right to give land

titles to prospective land owners. It also made it possible for every citizen to access land as a resource for severally purposes. Despite these seemingly vantage position, the Act has come under severe criticism and in dire need of change. Furthermore, the issue of climate change and desertification, combined with cattle grazing has become a national issue which demands urgent policy change.

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