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LAND TENURE, PROPERTY RIGHTS, AND COMMERCIAL DEVELOPMENT: EXAMINING THE TENSIONS BETWEEN CUSTOMARY LAW, STATUTORY LAW, AND INVESTMENT SECURITY IN NIGERIA

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Abstract
This paper explores how Nigeria's dual land tenure system customary and statutory law affects property rights and commercial development. While land is vital for production, identity, and governance, conflicting systems under customary practices and the Land Use Act of 1978 create uncertainty, weaken tenure security, and deter investment. Challenges include poor land registration, bureaucratic delays, expropriation risks, and weak contract enforcement, impacting housing, agriculture, infrastructure, and industry. The study calls for harmonized reforms to protect property rights, streamline administration, and build investor confidence while preserving cultural heritage, enabling Nigeria to unlock land's potential, reduce conflict, and drive sustainable economic growth.

Keywords: Land tenure, property rights, customary law, statutory law, investment security, commercial development

1. Introduction
Land in Nigeria holds deep economic, cultural, and political importance, serving as both a means of livelihood and a symbol of heritage.[1] Traditionally, governed by communal customary tenure, access to land reflected lineage and collective values. Colonialism introduced English land law, culminating in the Land Use Act of 1978, which centralized land control under state governors. Intended to streamline administration and ensure equitable access, the Act has instead sparked controversy by clashing with entrenched customary practices and modern development needs.[2]

Today, Nigeria's dual land tenure system—customary law in rural areas and statutory law in urban and commercial settings—creates overlapping claims, bureaucratic hurdles, and insecurity of title. These conflicts hinder long-term investments in agriculture, housing, and infrastructure, undermining economic growth and political stability. Without harmonizing these frameworks, land's potential as a driver of national development remains unrealized.[3]

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[1] T O Elias, *Nigerian Land Law*, (5th ed., London: Routledge, 1971).
[2] Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004.
[3] J A Omotola, Law *and Land Rights: Whither Nigeria?* (Lagos: University of Lagos Press, 1984).

1.1 Statement of the Problem

This study highlights how Nigeria's dual land tenure system customary practices alongside statutory reforms creates uncertainty in property rights and weakens enforcement, discouraging both local and foreign investment. Investors fear expropriation, litigation, and political interference, while the Land Use Act, meant to centralize administration, has instead produced bureaucratic delays, arbitrary decision-making, and corruption through governors' discretionary control over Certificates of Occupancy.

Cumbersome, costly registration processes leave much land unregistered or informally held, leading to underutilization, low agricultural productivity, stalled housing and infrastructure projects, and reduced foreign direct investment. Without addressing these systemic tensions, Nigeria risks continued economic stagnation, insecurity, and missed development opportunities.

1.2 Research Objectives

The broad objective of this research is to examine the relationship between land tenure, property rights, and commercial development in Nigeria, with a particular focus on the interplay between customary law, statutory law, and investment security.

The specific objectives include:

i. To analyze the historical evolution of land tenure systems in Nigeria.
ii. To identify the tensions between customary law and statutory law in the regulation of land.
iii. To assess the implications of insecure property rights on commercial and infrastructural development.
iv. To evaluate the effectiveness of the Land Use Act in balancing access, equity, and security.
v. To propose reforms for harmonizing land administration and enhancing investment security.

1.3 Research Questions

This study seeks to answer the following research questions:

1. How has the historical evolution of land tenure shaped contemporary property rights in Nigeria?
2. In what ways do customary law and statutory law conflict in land administration?
3. What are the consequences of insecure property rights for commercial and infrastructural development?
4. How effective is the Land Use Act in securing land rights and promoting investment?
5. What reforms are necessary to harmonize Nigeria's land tenure systems and enhance security of tenure?

1.4 Significance of the Study

This research is significant for its broad legal, policy, and economic implications. It sheds light on the complexities of Nigeria's pluralistic land tenure system and emphasizes the need for harmonization to promote transparency, reduce conflict, and attract investment. Secure property rights, the study shows, are essential for boosting agricultural productivity, urban development, and foreign direct investment.

For investors, developers, and civil society, the findings provide practical guidance for navigating Nigeria's challenging land sector. By proposing concrete reforms, the study contributes to debates on land governance and offers strategies to unlock land's potential as a driver of national development.

1.5 Scope of the Study

This research focuses on the interaction between customary law, statutory law, and investment security in Nigeria's land tenure system. While the discussion covers the general Nigerian context, examples will be drawn from specific regions and case studies to illustrate tensions and challenges. The scope also extends to examining the Land Use Act of 1978, relevant case law, and international perspectives on property rights. However, the study does not attempt to provide a comprehensive account of land tenure in every Nigerian community, as practices vary widely across ethnic and regional lines.

1.6 Methodology

The research adopts a doctrinal legal research methodology, relying on primary and secondary sources. Primary sources include statutory instruments (notably the Land Use Act), case law, and constitutional provisions. Secondary sources include scholarly articles, textbooks, reports, and policy papers. A comparative approach is also employed, examining land tenure reforms in other jurisdictions such as Ghana, Kenya, and South Africa, to draw lessons for Nigeria.

2. Understanding Land Tenure in Nigeria

Land tenure in Nigeria encompasses the rules governing land ownership, use, and transfer, shaped by customary law, colonial influence, and the Land Use Act of 1978.[4] Customary systems view land as a communal heritage held by traditional authorities, emphasizing ancestral continuity and collective security. Colonial and statutory systems, however, introduced individualized ownership and registrable interests, clashing with indigenous communal practices. Today, these frameworks coexist uneasily, creating persistent tensions in land administration and property rights.[5]

2.1 Property Rights: Bundle of Rights Theory

Classical property rights theory defines ownership as a "bundle of rights," but Nigeria's dual tenure systems complicate this model.[6] Customary law grants individuals usufruct rights while ultimate ownership rests with the community, whereas the Land Use Act vests all land in state governors holding it in trust.[7] This creates a gap between ownership and control, as individuals may hold statutory rights of occupancy, yet the state retains overriding authority, including revocation powers.[8] The result is a hybrid property regime blending Anglo-American legal concepts with indigenous customary practices, producing ongoing tension in land ownership and administration.[9]

2.2 Customary Law Perspectives on Property

Customary law remains deeply embedded in Nigerian landholding patterns, particularly in rural areas where formal titling is scarce. It recognizes land as a social and spiritual asset tied to kinship and identity. Rights under customary tenure are typically hierarchical:

a. The community is the ultimate owner.
b. The family or lineage holds collective interests.
c. The individual enjoys derivative use rights, often subject to family or community approval.[10]

Notably, land under customary tenure is rarely alienated permanently. Transfers outside the family or community require consent and are often viewed with suspicion.[11] Women's rights under

[4] T O Elias, *Nigerian Land Law* (London: Sweet & Maxwell, 1971) p. 45.
[5] M C Okany, *Nigerian Customary Law* (Enugu: Africana-FEP, 1984) p. 212.
[6] A M Honoré, A.M., "Ownership," in Guest, A.G. (ed.), *Oxford Essays in Jurisprudence* (Oxford: OUP, 1961) p. 112.
[7] Land Use Act, Cap L5, Laws of the Federation of Nigeria (2004).
[8] B O Kasunmu, *The Nigerian Land Use Act: Policy and Practice* (Ibadan: Spectrum, 1982) p. 66.
[9] ibid
[10] B O Nwabueze, *Nigerian Land Tenure: Principles and Practice* (Enugu: Nwamife, 1972) p. 98.
[11] S N C Obi, *Modern Family Law in Southern Nigeria* (Enugu: Fourth Dimension, 1990) p. 156.

customary law remain constrained, with many traditions limiting female access to land despite constitutional guarantees of equality.[12]

2.3 Statutory Law and the Land Use Act

The Land Use Act of 1978 centralized land control under state governors to harmonize tenure and promote equitable access.[13] It introduced statutory rights of occupancy that could be granted, transferred, or revoked. However, critics argue it replaced traditional overlords with bureaucratic ones, fostering corruption, insecurity of tenure, and administrative delays.[14] For investors, this framework creates uncertainty, as centralized control heightens risks of arbitrary revocation and political interference.[15]

2.4 Theoretical Models of Property and Development:

Several theoretical frameworks illuminate the Nigerian context:

I. Marxist Theory: Views land as a means of production, where tenure systems determine class relations. Nigeria's LUA arguably entrenches state control, potentially limiting private capital formation.[16] Economic Efficiency Theory: Suggests that secure, transferable property rights enhance investment and economic growth.[17] Unclear land rights in Nigeria, however, deter investors and raise transaction costs.
II. Legal Pluralism: Acknowledges the coexistence of multiple legal systems (customary, statutory, religious) within one jurisdiction. Nigeria exemplifies this, as communities often navigate both customary and statutory systems depending on context.[18]

These theories underscore the importance of striking a balance between protecting traditional values and facilitating economic modernization through land reforms.

2.5 Conceptual Tensions between Tenure and Development

At the conceptual level, the tension lies between security of tenure and flexibility of land allocation. Customary law emphasizes stability, continuity, and community welfare. Statutory law prioritizes administrative efficiency, individualization, and formalization. Yet both systems often fail to deliver the predictable, transparent, and enforceable property rights that investors demand.[19]

3. Pre-Colonial Land Tenure Systems

Before colonial intrusion, Nigerian societies developed indigenous land tenure systems rooted in custom, tradition, and communal values. Land was considered a sacred trust, belonging ultimately to the ancestors, the living, and generations unborn.[20] It was rarely treated as a commodity but rather as a heritage to be preserved.

The dominant features of pre-colonial tenure included:

i. Communal Ownership: Land was vested in families, lineages, or communities, with chiefs or family heads acting as custodians.[21]

[12]G Ezejiofor, *Women's Rights to Land in Nigeria* (Lagos: NIALS, 1998) p. 34.
[13]Land Use Act, s. 1.
[14]J A Omotola, 'Compulsory Acquisition of Land and Compensation in Nigeria' (1982) 26(1) Journal *of African Law*, 56.
[15]I O Smith, *Practical Approach to Law of Real Property in Nigeria* (Lagos: Ecowatch, 2013) p 207.
[16]K Marx, Capital: A Critique of Political Economy Vol. 1 (1867).
[17]H Demsetz, 'Toward a Theory of Property Rights' (1967) 57(2) *American Economic Review*, 347.
[18] J Griffiths, 'What is Legal Pluralism?' (1986) 24(1) *Journal of Legal Pluralism*
[19]O E Aluko, 'The Impact of Urbanization on Housing and Land Rights in Nigeria' (2010) 48(3) *Journal of African Studies,* 310.
[20] T O Elias, Nigerian *Land Law* (London: Sweet & Maxwell, 1971) p 11.
[21]B O Nwabueze, Nigerian *Land Tenure: Principles and Practice* (Enugu: Nwamife, 1972) p 54.

ii. Inalienability of Land: Permanent alienation outside the family or community was rare, except in cases of conquest or inter-communal agreements.[22]
iii. Usufruct Rights: Individuals could cultivate and occupy land but were expected to respect communal restrictions.[23]
iv. Spiritual Dimension: Land was often tied to deities and rituals, reinforcing the sacredness of territory.[24]

Different regions exhibited variations: the Igbo practiced lineage-based allocation, the Yoruba emphasized chieftaincy control, and the Hausa-Fulani system was shaped by Islamic jurisprudence (Maliki law), which introduced more formalized tenure and taxation.[25]

3.1 Colonial Interventions and Dualism in Land Tenure

With the advent of colonial rule in the late 19th century, the British introduced statutory landholding concepts that clashed with indigenous systems. The most notable colonial policies included:
Crown Lands Ordinance 1900 (Southern Nigeria): Declared all lands not in private ownership as "Crown Land," undermining customary claims.[26]
Public Lands Ordinance 1902 (Northern Nigeria): Empowered the Governor to control all lands for public purposes.[27]
Land and Native Rights Proclamation 1910 (Northern Nigeria): Declared all lands to be under the control of the Governor, held in trust for the natives, foreshadowing the LUA framework.[28]

These laws created a dual system: customary law continued to govern native communities, while statutory law applied in urban centers and areas of economic interest. This dualism remains a central challenge in Nigeria's land tenure system.[29]

3.2 The 1958 Lagos Executive Development Board Model

By the mid-20th century, urbanization forced the colonial government to experiment with land development policies. The Lagos Executive Development Board (LEDB), established in 1958, acquired land for urban housing, slum clearance, and infrastructure.[30] This approach demonstrated the increasing recognition of the state as the primary land allocator, paving the way for post-independence centralization of land rights.

3.3 Post-Independence Land Tenure Reforms

After independence in 1960, Nigeria inherited this dual structure of land tenure. Several shortcomings became evident:
a. Unclear ownership structures discouraged investment.
b. Customary practices often conflicted with modern economic demands.
c. Land speculation and concentration among elites worsened inequality.[31]

In response, the government appointed commissions of inquiry (e.g., the Coker Commission 1958 and the Land Use Panel 1977) to recommend reforms. The consensus was that Nigeria required a uniform and centralized land tenure system.[32]

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[22] M C Okany, Nigerian *Customary Law* (Enugu: Africana-FEP, 1984) p 122.
[23] S N C Obi, *Modern Family Law in Southern Nigeria* (Enugu: Fourth Dimension, 1990) p. 88.
[24]V C Uchendu, The Igbo of Southeast Nigeria (New York: Holt, 1965) p. 74.
[25]J A Yakubu, *Introduction to Customary Law in Nigeria* (Ibadan: Demyaxs, 1999) p. 136.
[26] Crown Lands Ordinance, 1900
[27] Public Lands Ordinance, 1902.
[28] Land and Native Rights Proclamation, 1910.
[29]B O Kasunmu, *The Nigerian Land Use Act: Policy and Practice* (Ibadan: Spectrum, 1982) p. 22.
[30] Lagos Executive Development Board Ordinance, 1958.
[31]J A Omotola, 'Compulsory Acquisition of Land and Compensation in Nigeria' (1982) 26(1) *Journal of African Law* ,65.
[32] Report of the Land Use Panel, 1977.

3.4 The Land Use Act 1978: A Turning Point

The promulgation of the Land Use Act (LUA) of 1978 marked the most significant reform in Nigerian land law. The Act:

1. Vested all land in each state in the Governor.
2. Introduced statutory and customary rights of occupancy.
3. Limited private freehold ownership.
4. Empowered the state to revoke rights for overriding public interest (with compensation).[33]

The LUA sought to address inequality, simplify acquisition for government projects, and curb speculative hoarding. However, its implementation exposed several flaws: bureaucratic corruption, inadequate compensation, and insecurity of tenure.[34]

3.5 Post-LUA Developments and Judicial Interpretation

Since 1978, Nigerian courts have played a central role in interpreting the LUA. In Nkwocha v. Governor of Anambra State (1984), the Supreme Court affirmed that the LUA had radically transformed land ownership by vesting control in governors.[35] Similarly, in Abioye v. Yakubu (1991), the Court emphasized that the LUA superseded customary tenure, though it preserved rights of occupancy.[36]

Despite these pronouncements, customary law continues to thrive, particularly in rural communities where formal registration is limited. The result is a persistent gap between law in books and law in practice.[37]

3.6. Contemporary Challenges and Reforms

Recent debates on land reform in Nigeria have focused on the following:

i. Insecurity of Tenure: Investors remain wary of revocation powers.
ii. Gender Inequality: Customary restrictions on women's access persist despite constitutional guarantees.
iii. Informal Settlements: Rapid urbanization has created slums, complicating planning.
iv. Need for Land Titling: Initiatives such as the Presidential Technical Committee on Land Reform (2009) aim to introduce systematic titling.[38]

Thus, the historical evolution of land tenure in Nigeria reflects a shift from communal heritage, through colonial dualism, to state centralization, yet challenges of equity, efficiency, and development remain unresolved.

4. Historical Background of Statutory Land Law

Colonial administrators first introduced statutory frameworks governing land through ordinances such as the Public Lands Ordinance of 1876 and the Crown Lands Ordinance of 1900[39]. These laws enabled the Crown to declare vast tracts of land as government property, often disregarding existing indigenous rights. The introduction of such ordinances reflected the colonial government's desire to establish control over land to facilitate commercial plantations, infrastructure projects, and extractive industries[40].

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[33] Land Use Act, Cap L5, LFN (2004), s. 1–5.
[34] I O Smith, Practical *Approach to Law of Real Property in Nigeria* (Lagos: Ecowatch, 2013) p. 209.
[35] *Nkwocha v Governor of Anambra State* (1984) 1 SCNLR 634.
[36] Abioye v. Yakubu (1991) 5 NWLR (Pt. 190) 130.
[37] O E Aluko, 'The Impact of Urbanization on Housing and Land Rights in Nigeria' (2010) 48(3) *Journal of African Studies,* 322.
[38] Presidential Technical Committee on Land Reform, Government of Nigeria (2009).
[39] T O Elias, *Nigerian Land Law and Custom* (London: Routledge, 1951).
[40] M C Okany, *The Nigerian Law of Property* (Enugu: Africana-FEP, 1984)

The centralisation of land ownership under statutory control culminated in the Land Use Act of 1978, promulgated by the military government of General Olusegun Obasanjo. The Act sought to end the fragmentation of land tenure systems, prevent land speculation, and ensure equitable access to land for both public and private use[41].

4.1 Key Provisions of the Land Use Act 1978

The Land Use Act (LUA), fundamentally redefined property rights in Nigeria through the following provisions:

1. Vesting of Land in the Governor: Section 1 of the LUA vests all land in each state in the Governor, who holds it in trust for the people. This provision effectively eliminated the concept of absolute ownership under both customary and statutory tenure[42].
2. Grant of Rights of Occupancy: The Act replaced ownership with a system of "rights of occupancy," either statutory rights of occupancy (granted by the Governor) or customary rights of occupancy (granted by local government authorities). These rights may be statutory (for urban lands) or customary (for rural lands)[43].
3. Control and Administration of Land: Local governments are empowered to administer land within rural areas, while state governors retain authority over urban lands. This creates a complex administrative system with multiple levels of bureaucracy[44].
4. Compensation Provisions: The LUA provides for compensation in cases of compulsory acquisition, though this has often been criticised as inadequate because it excludes the value of the land itself and only covers "unexhausted improvements"[45].
5. Restrictions on Alienation: Holders of statutory rights of occupancy cannot transfer, mortgage, or sublease land without the Governor's consent. This provision has been criticised for creating significant bottlenecks in land transactions[46].

4.2 Impact on Property Rights

The LUA's framework fundamentally altered the conception of property rights in Nigeria. By eliminating absolute ownership and introducing a state-controlled regime of occupancy, it weakened the traditional idea of land as an inheritable family asset. Scholars argue that this shift has created insecurity of tenure, especially as the Governor's powers under the Act are vast and prone to abuse[47].

Moreover, the requirement for Governor's consent before any alienation of land has slowed down commercial transactions and discouraged foreign investors, who often regard such restrictions as excessive interference with private property rights[48].

4.3 Judicial Interpretation of the Land Use Act

The Nigerian judiciary has played a central role in interpreting the LUA's controversial provisions;

- In *Ogunleye v Oni,*[49] the Supreme Court held that while the LUA abolished freehold ownership, it did not extinguish existing customary rights but rather transformed them into rights of occupancy.

[41] J O Asein, 'The Land Use Act: Retrospect and Prospect' (1981) 1 *Nigerian Law Journal* ,45.
[42] Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004, s. 1.
[43] ibid., s. 5.
[44] ibid., s. 6.
[45] ibid., s. 29
[46] ibid., s. 22
[47] J A Omotola, *Essays on the Land Use Act* (Lagos: University of Lagos Press, 1984).
[48] B T Aluko, 'Governor's Consent and the Dynamics of Land Transactions in Nigeria' (2012) 5 *Journal of African Law* 77.
[49] (1990) 2 NWLR (Pt. 135) 745.

- In *Nkwocha v Governor of Anambra State*,[50] the court described the LUA as a "revolutionary legislation" that nationalised all land in Nigeria.
- However, in *Savannah Bank v Ajilo,*[51] the Supreme Court insisted that failure to obtain Governor's consent rendered a mortgage void, even where both parties acted in good faith.

These judicial interpretations illustrate both the rigidity and far-reaching impact of the Act on property transactions.

4.4 Criticisms of the Statutory Framework

Despite its goals, the LUA has attracted severe criticisms:

1. Centralisation of Power: Vesting land in the Governor has concentrated excessive power in the executive, creating room for corruption and abuse of office.[52]
2. Insecurity of Tenure: Holders of rights of occupancy do not enjoy true ownership and may lose land through revocation without adequate compensation.[53]
3. Commercial Limitations: The requirement of Governor's consent hinders fluidity in the real estate and financial sectors deterring both local and foreign investment.[54]
4. Conflict with Customary Law: While the LUA intended to unify tenure systems, it has instead deepened tensions between customary land rights and statutory regimes.[55]

4.5. Comparative Perspectives

Other African countries have adopted more flexible statutory frameworks:

I. Ghana's Land Act of 2020 retains traditional authorities as central players in land administration, thereby ensuring community participation.
II. Kenya's Constitution of 2010 recognises private, public, and community land, creating a pluralistic system that balances statutory and customary rights.

The Nigeria's Land Use Act, by contrast, remains rigid and centralised, reflecting its military origins[56]. The statutory framework, embodied by the Land Use Act, represents both a revolution and a paradox in Nigerian land law. While it aimed at unifying and simplifying land tenure, it has created new layers of bureaucracy, insecurity, and tension with customary law. For Nigeria's commercial development to thrive, reforms are urgently needed to decentralise land administration, enhance tenure security, and streamline property transactions in line with modern investment realities[57].

5. Customary Tenure Practices and Commercial Pressures

Customary land tenure in Nigeria typically regards land as a communal asset, with families, clans, or communities holding the land collectively.[58] Land is managed under the authority of traditional rulers or family heads, who allocate plots for farming, housing, or small-scale commercial purposes.[59] This system promotes social security and cultural continuity but often lacks the documentation, clarity, and enforceability that modern commerce requires.

[50] (1984) 1 SCNLR 634
[51] 1989) 1 NWLR (Pt. 97) 305
[52] J A Omotola, Essays on the Land Use Act (1984).
[53] ibid.
[54] Aluko (n 19)
[55] Elias, (n 20)
[56] Boone, C., Property and Political Order in Africa: Land Rights and the Structure of Politics (Cambridge: CUP, 2014).
[57] Kasunmu, (n 29).
[58] Elias (n 20)
[59] A A Oba, 'Law and Cultural Diversity: Challenges of Customary Law in Nigeria' (2010) 51 *Journal of African Law* 1.

Commercial developers, both local and foreign, generally demand clear title, transferable rights, and certainty of tenure to secure investment.[60] Customary land tenure rarely provides such guarantees. Instead, land transfers under customary law are often oral, unwritten, and revocable, making them risky for banks, developers, and foreign investors.[61] This tension explains why statutory mechanisms for registration and land certification have been promoted as tools for investment security.

5.1 Statutory Law and the Land Use Act

The Land Use Act of 1978 sought to centralize land ownership by vesting all land in each state in the governor, who holds it in trust for the people.[62] In theory, this framework should have facilitated land accessibility for commercial development through the granting of statutory and customary rights of occupancy. However, in practice, the Act often complicates matters.

Governors' discretionary powers over land allocation have led to allegations of corruption, favoritism, and bureaucratic inefficiency.[63] Investors face delays in securing Certificates of Occupancy (C of O), which are essential for bank loans and formal transfers. Furthermore, the Act does not fully extinguish the relevance of customary land tenure, since customary rights of occupancy remain recognized at the local government level.[64] As a result, overlapping claims and legal uncertainty persist.

5.2 Customary Authorities as Gatekeepers

Traditional rulers and community leaders often act as "gatekeepers" in the process of land acquisition for development. Even when statutory titles are sought, investors frequently need the consent of customary authorities to avoid local resistance.[65] For instance, large-scale agricultural and mining projects in Nigeria have faced community pushback due to perceptions of exclusion or exploitation, even where statutory approvals were obtained.[66]

This situation demonstrates the dual authority structure in land governance: statutory law provides formal legitimacy, while customary institutions provide social legitimacy. Without alignment between the two, commercial projects may face significant obstacles, including protests, litigation, or even sabotage.[67]

5.3 Case Studies of Conflict and Adaptation

A number of case studies highlight the challenges and adaptations arising from this duality.

i. The Lekki Free Trade Zone (LFTZ), Lagos State: Development here required negotiations with local communities whose ancestral lands were acquired under statutory powers. Although compensation was provided, disputes lingered over its adequacy and the displacement of residents.[68]
ii. Oil and Gas Host Communities in the Niger Delta: Despite statutory acquisition of land by multinational oil companies, communities often demand parallel benefits such as royalties, jobs, and social amenities, effectively asserting customary claims alongside statutory rights.[69]

[60]O Fabiyi, O., 'Urban Land Acquisition and Compensation in Nigeria' (2006) *Journal of Human Ecology*.
[61]H W O Okoth-Ogendo, Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya (1991).
[62] Land Use Act, Cap L5 Laws of the Federation of Nigeria (LFN) 2004.
[63]P S Ogedengbe, 'The Land Use Act: An Inhibitor of Land Development in Nigeria'
[64] R Smith, 'Land Tenure Reform in Africa' (2003) World Bank Policy Research Paper.
[65]Niki Tobi, J.S.C., Cases and Materials on Nigerian Land Law (2012).
[66]A Ikelegbe, 'Civil Society and Conflict in the Niger Delta'(2005) *Journal of Modern African Studies.*
[67]S C Okafor, S.C., 'Customary Land Tenure and Economic Development in Nigeria' (2009*) Nigerian Law and Practice Journal*.
[68]S R Akinola, 'Community Dispossession and Land Grabbing in Lagos' (2018) *African Studies Review.*
[69]J G Frynas, Oil in Nigeria: Conflict and Litigation (2000).

iii. Abuja Urban Expansion: As Nigeria's capital expanded, indigenous Gwari communities resisted dispossession under statutory acquisition powers, insisting on recognition of customary land rights.[70]

These examples illustrate the fact that commercial development cannot simply rely on statutory law. Developers must also navigate customary systems through negotiation, compensation, and community engagement.

5.4 Towards Harmonization of Systems

Resolving the tensions between customary land tenure and commercial development requires an integrated approach. Key recommendations include:

i. Codification of Customary Practices: Documenting local land customs could provide clarity and predictability, reducing disputes.[71]
ii. Strengthening Alternative Dispute Resolution (ADR): Mediation and arbitration can resolve land disputes more efficiently than litigation.[72]
iii. Community Development Agreements (CDAs): Developers should formalize social responsibility commitments to ensure community buy-in.[73]
iv. Decentralization of Land Registration: Making land titling accessible at local levels can bridge the gap between customary allocation and statutory recognition.[74]
v. Enhanced Judicial Interpretation: Nigerian courts have an important role in harmonizing customary and statutory claims through case law.[75]

6. Case Law Analysis and Judicial Interpretation

The Nigerian judiciary has played a central role in shaping the legal landscape of land tenure, property rights, and commercial development. While statutory provisions and customary law often create tensions, the courts have become the final arbiters in interpreting and harmonising these competing claims. Judicial precedents have significantly influenced the recognition of customary land rights, the implementation of statutory regimes such as the Land Use Act (LUA), and the extent to which investment security is guaranteed in Nigeria.

6.1 Recognition of Customary Land Rights by Courts

The judiciary has consistently acknowledged that customary law forms a valid source of land tenure in Nigeria, provided it is not repugnant to natural justice, equity, and good conscience. In *AmoduTijani v Secretary, Southern Nigeria* [76], the Privy Council clarified that ownership of land under customary law differs from absolute ownership in English law. Instead, it is a communal right of usufruct, with the community retaining ultimate control of the land. This landmark case laid the foundation for recognising customary tenure within the Nigerian legal system.

Similarly, in *Lewis v Bankole* [77], the court affirmed that land under customary law is generally owned by the family or community and not the individual. The decision underscores the judiciary's respect for customary practices, while also exposing the inherent challenges of reconciling such practices with modern commercial transactions that require certainty of title.

[70] A Abubakar, 'Indigenous Communities and Urban Expansion in Abuja' (2016) *Habitat International.*
[71] J Ubink, 'Customary Land Rights in Africa: Issues for Reform' (2008) IDS Working Paper.
[72] A Shittu, 'ADR and Land Disputes in Nigeria' (2014) *Nigerian Journal of Legal Studies.*
[73] UNEP, Community Development Agreements in the Extractive Sector (2011).
[74] A L Mabogunje, Land Reform in Nigeria: Progress, Problems and Prospects (2010).
[75] Supreme Court of Nigeria, Ogunola v. Eiyekole (1990) 4 NWLR (Pt. 146) 632.
[76] *AmoduTijani v Secretary, Southern Nigeria* (1921) 2 AC 399 (PC).
[77] *Lewis v Bankole* (1908) 1 NLR 81.

6.2 Judicial Interpretation of the Land Use Act

The 1978 Land Use Act (LUA) remains one of the most litigated statutes in Nigeria. Courts have been tasked with clarifying its scope, particularly regarding the vesting of land in the Governor and the rights of occupiers. In N*kwocha v Governor of Anambra State* [78], the Supreme Court held that the LUA effectively nationalised all land in Nigeria by vesting radical title in the State. However, the Court also recognised that existing customary rights of occupancy could not be extinguished without due process and compensation.

Another crucial interpretation was offered in *Abioye v Yakubu,*[79] where the Supreme Court ruled that the LUA did not abolish the communal nature of land ownership under customary law. Instead, it sought to regulate and streamline the process of land allocation, ensuring state oversight while preserving traditional rights. This judicial stance reveals the courts' cautious approach to balancing statutory authority with customary practices.

6.3 Security of Title and Investment Concerns in Judicial Decisions

One of the judiciary's central challenges has been ensuring that investors, whether local or foreign, can obtain secure and enforceable rights in land. In *Savannah Bank Ltd v Ajilo ,*[80] the Supreme Court invalidated a mortgage transaction because the Governor's consent, as required under section 22 of the LUA, had not been obtained. While legally sound, the decision was widely criticised for undermining commercial certainty and discouraging investment.

Similarly, in *Ogunleye v Oni* [81], the Supreme Court held that the LUA vested absolute ownership of land in the Governor, with occupiers merely holding a right of occupancy. This reinforced the dependency of investors on governmental approval, thereby complicating large-scale land acquisitions. Such judicial positions highlight the tensions between legal orthodoxy and the practical demands of economic development.

6.4 Protection of Customary Rights against Statutory Encroachment

Courts have often had to strike a delicate balance between protecting customary rights and upholding statutory provisions. In *Adole v Gwar* [82], the Supreme Court reiterated that customary rights of occupancy are not automatically extinguished by statutory allocation, except where expressly revoked according to the LUA. This ensures that communities and individuals with historical ties to land are not arbitrarily dispossessed.

The case of *Dielimo v Boma*[83] also demonstrates the judiciary's role in protecting indigenous communities against unlawful statutory encroachment. Here, the Court invalidated a land grant made by state authorities that disregarded existing customary ownership. Such judgments are vital in reinforcing both social justice and the legitimacy of customary tenure systems.

6.5 The Judiciary's Role in Balancing Competing Interests

The Nigerian judiciary has sought to balance the conflicting demands of customary tenure, statutory regulation, and investment security. While decisions such as *Savannah Bank v Ajilo*[84] exposed the rigidity of statutory compliance, other rulings demonstrate a willingness to safeguard customary rights. The challenge, however, lies in the unpredictability of judicial outcomes, which continues to undermine investor confidence.

[78] *Nkwocha v Governor of Anambra State* (1984) 1 SCNLR 634.
[79] *Abioye v Yakubu* (1991) 5 NWLR (Pt. 190) 130.
[80] *Savannah Bank Ltd v Ajilo* (1989) 1 NWLR (Pt. 97) 305.
[81] *Ogunleye v Oni* (1990) 2 NWLR (Pt. 135) 745.
[82] *Adole v Gwar* (2008) 11 NWLR (Pt. 1099) 562.
[83] *Dielimo v Boma* (2003) 12 NWLR (Pt. 834) 562.
[84] Supra, note 85

Courts are increasingly aware of their role in shaping Nigeria's economic future through land law jurisprudence. For instance, in *Registered Trustees of Apostolic Church v Olowoleni* [85], the Supreme Court emphasised the importance of legal certainty in property transactions, urging stricter adherence to statutory requirements while acknowledging customary nuances.

Judicial interpretation has proven to be a double-edged sword in Nigeria's land tenure system. On one hand, the courts have preserved the essence of customary law and checked arbitrary statutory overreach. On the other, rigid enforcement of statutory provisions has sometimes hampered investment and created uncertainty. The judiciary's role remains pivotal in harmonising these competing interests, but greater consistency and reform-oriented jurisprudence are necessary to foster a more investor-friendly land tenure regime.

7. Conclusion and Recommendations

7.1 Conclusion

This study explored the tension between Nigeria's customary land practices and statutory regulation under the Land Use Act of 1978. Traditionally, land has been a communal heritage governed by lineage-based norms, but statutory control centralized administration under state governors. While designed to simplify land access, this framework created bureaucratic hurdles, conflicts with indigenous practices, and insecurity in property rights—discouraging agricultural investment, delaying real estate development, and obstructing infrastructure projects due to community resistance.

To secure land as both a cultural asset and an economic resource, reforms must harmonize customary and statutory systems rather than displace either. Strengthening institutions, improving transparency, and revising the Land Use Act can protect citizens' rights while supporting sustainable commercial growth. Lessons from other African nations show that integrating customary rights with modern safeguards is achievable and beneficial. A fair and reliable land tenure system is essential for transforming land into a foundation for national development and investment security.

7.2 Recommendations

In view of the tensions between customary law, statutory law, and the demands of commercial development in Nigeria, several pragmatic recommendations are necessary to promote investment security and balanced property rights, they are:

A. Comprehensive Land Law Reform: The Land Use Act of 1978 should be revisited and amended to address ambiguities that weaken tenure security. Its provisions on governor's consent for land transactions have been criticized as cumbersome, discouraging investment and development. A modernized land law should streamline processes while ensuring inclusivity of customary rights.

B. Harmonization of Customary and Statutory Tenure Systems: Customary landholding practices must be better integrated into statutory frameworks. Recognition of legitimate customary interests, particularly in rural areas, would reduce disputes and overlapping claims. Ghana's Land Administration Project offers a model where customary land secretariats document and formalize land rights.

C. Digitization and Land Registry Development: Nigeria should adopt robust, transparent, and accessible land registration systems. Digitization of land records would curb fraud, multiple allocations, and conflicting claims, thereby boosting investor confidence.

D. Public Awareness and Community Engagement: Many disputes arise because local communities are unaware of statutory requirements or their legal rights. Outreach programs and legal aid services can bridge the knowledge gap.

E. Investment-Friendly Policies: To attract both domestic and foreign investment, Nigeria must ensure predictable rules, respect for property rights, and protection against arbitrary revocation of land titles. Tax incentives and public-private partnerships could further strengthen land-based commercial projects.

[85] Registered Trustees of Apostolic Church v. Olowoleni (1990) 6 NWLR (Pt. 158) 514.