

From Custom to Statute: A Historical and Legal Analysis of Land Tenure Systems in Nigeria

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Abstract— Land tenure systems in Nigeria are deeply rooted in the nation's historical evolution, from pre-colonial customary practices to colonial impositions and post-independence legal reforms. This paper examines the intersection of Nigerian history and property law, arguing that contemporary land disputes and inefficiencies in the legal framework are direct consequences of unresolved historical tensions. The study employs an interdisciplinary methodology, combining legal analysis of key statutes (notably the Land Use Act of 1978) with historical review of colonial archives, customary traditions, and post-independence land conflicts. The paper first explores pre-colonial landholding systems, emphasizing communal ownership and kinship-based rights. It then analyzes how British colonial policies (e.g., the Public Lands Acquisition Act of 1917) disrupted these systems, introducing individual ownership and state control. The post-colonial period, marked by the Land Use Act, further centralized land administration, often clashing with customary norms. Case studies, such as urban land disputes in Lagos and resource conflicts in the Niger Delta, illustrate the enduring legal-historical friction. Findings reveal that Nigeria's property law remains a contested hybrid of imported statutes and resilient customary practices, with implications for economic development and social equity. The paper concludes with recommendations for legal reform, including decentralization of land governance and clearer integration of customary rights into statutory frameworks. By bridging historical scholarship and legal analysis, this research contributes to ongoing debates on land reform in post-colonial states.

Keywords: Land Tenure Systems; Nigerian Property Law; Colonial Land Policies; Customary vs. Statutory Rights.

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INTRODUCTION

Land tenure and property rights in Nigeria represent a complex interplay between indigenous customary systems, colonial legal impositions, and post-independence statutory reforms. The historical evolution of Nigerian property law cannot be understood without examining the socio-political transformations brought about by British colonialism and the subsequent attempts by the Nigerian state to reconcile imported legal frameworks with deeply rooted customary landholding traditions. This paper seeks to analyze the historical foundations of Nigerian land tenure systems and their legal manifestations, demonstrating how unresolved colonial legacies continue to shape contemporary property disputes and governance challenges.

Prior to colonial rule, land in Nigeria was predominantly governed by customary laws, which varied across ethnic groups but generally emphasized communal ownership, inheritance-based rights, and the custodial role of traditional rulers (Adewoye, 1977). Among the Yoruba, for instance, land was held under the principle of *ile* (family land), where individual ownership was secondary to lineage-based control (Lloyd, 1962). Similarly, in Igbo societies, land was managed by kinship groups, with decisions on allocation and use made by family heads or village councils (Uchendu, 1965). These systems were disrupted by British colonial policies, which sought to impose a Eurocentric concept of individual land ownership to facilitate economic exploitation and administrative control (Inyang, et al., 2021; Inyang, et al., 2023). The Public Lands Acquisition Act of 1917, for example, granted the colonial government sweeping powers to appropriate land for public purposes—often without adequate compensation—leading to widespread displacement and discontent (Okoth-Ogendo, 1991).

The post-independence period saw further legal centralization of land administration, most notably through the Land Use Act of 1978, which vested all land in the state governors, effectively undermining customary landholding structures (Omotola, 1984). Despite its intent to streamline land ownership and reduce conflicts, the Act has been criticized for creating bureaucratic bottlenecks, facilitating government land grabs, and exacerbating tenure insecurity, particularly in rural communities (Adeniyi, 2018). Judicial decisions such as *Ogunola v. Eiyekole* (1990) NWLR (Pt. 135) 745 highlight the tensions between statutory and customary land rights, where courts often struggle to balance formal legal provisions with indigenous equity principles.

This paper argues that Nigeria's land tenure challenges—from urban housing shortages to violent communal clashes—are symptomatic of an unresolved legal duality: a statutory system that disregards historical equity and a customary framework that lacks formal enforcement mechanisms. By tracing these issues through historical and legal lenses, this study contributes to broader discourses on post-colonial land reform and the decolonization of African property regimes.

HISTORICAL FOUNDATIONS OF PROPERTY RIGHTS IN NIGERIA

The historical trajectory of property rights in Nigeria reveals a profound transformation from decentralized, community-based systems to state-controlled land administration, a shift that has significantly influenced contemporary legal disputes and socioeconomic dynamics. Prior to colonial contact, land tenure across Nigeria's diverse ethnic groups was predominantly governed by customary laws that emphasized collective ownership, ancestral heritage, and the spiritual significance of land. Among the Hausa-Fulani in Northern Nigeria, land was administered under the *gani* system, where the emir, as the political and spiritual leader, allocated usufructuary rights to families while retaining ultimate ownership on behalf of the community (Bello-Imam, 1995). This system differed markedly from the practices of the Niger Delta communities, where land was held by lineages and governed by intricate kinship rules that dictated inheritance, farming rights, and settlement patterns (Alagoa, 1972).

The advent of British colonial rule in the late 19th century introduced radical changes to these indigenous systems. The colonial administration, seeking to maximize economic extraction and administrative efficiency, imposed foreign legal doctrines that privileged state and individual ownership over communal rights. The Land and Native Rights Proclamation of 1910 in Northern Nigeria, for instance, declared all lands "native lands" under the control of the Governor, effectively eroding traditional authority over land allocation (Mamdani, 1996). In Southern Nigeria, the Public Lands Acquisition Act of 1917 empowered the government to compulsorily acquire land for public purposes, often without adequate compensation or regard for existing customary arrangements (Afigbo, 1972). These policies not only disrupted local economies but also sowed the seeds of enduring conflicts, particularly in regions like the Niger Delta, where colonial land seizures for palm oil and later petroleum exploration marginalized indigenous populations (Watts, 2004).

Post-independence reforms sought to address these colonial distortions but often entrenched state control further. The Land Use Act of 1978, arguably the most consequential post-colonial land legislation, nationalized all land in Nigeria, vesting its management in state governors. While the Act aimed to unify land administration and curb speculative hoarding, it inadvertently weakened customary landholding systems and exacerbated tenure insecurity (Ubink, 2008). For example, in *Salati v. Shehu (1986) 1 NWLR (Pt. 15) 198*, the Supreme Court grappled with the conflict between statutory land rights under the Act and pre-existing customary claims, ultimately ruling in favor of the latter but leaving room for ambiguity in future cases. Similarly, the Act's implementation in urban areas like Lagos and Abuja has fueled disputes over compulsory acquisitions and compensation, as seen in the protracted legal battles

surrounding the Maroko evictions of 1990, where thousands were displaced without adequate resettlement (Fourchard, 2011).

The historical evolution of Nigeria's land tenure systems underscores a persistent tension between state-imposed legal frameworks and indigenous property norms. This tension has manifested in widespread conflicts, from farmer-herder clashes in the Middle Belt to oil-related land disputes in the Niger Delta, all of which reflect the unresolved legacy of colonial and post-colonial land policies. Understanding these historical foundations is crucial for any meaningful reform of Nigeria's property law regime.

LEGAL FRAMEWORK OF PROPERTY RIGHTS IN NIGERIA

The modern legal framework governing property rights in Nigeria represents a complex amalgamation of statutory provisions, judicial precedents, and residual customary principles. At the heart of this framework lies the Land Use Act of 1978, which remains the most significant legislation on land tenure despite persistent controversies surrounding its interpretation and implementation. Enacted during the military regime of General Olusegun Obasanjo, the Act vests all land within a state's territory in the governor, who holds it in trust for the people (Section 1, Land Use Act, 1978). This radical departure from both customary landholding systems and English common law principles inherited from colonialism has generated extensive litigation, particularly regarding the extent of the governor's powers and the protection of customary rights. The Supreme Court's decision in *Nkwocha v. Governor of Anambra State (1984) 1 SCNLR 634* clarified that the Act did not abolish existing freehold interests but merely converted them to statutory rights of occupancy, a distinction that has profound implications for land transactions and inheritance disputes.

Complementing the Land Use Act is the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, which provides constitutional safeguards for property rights while simultaneously empowering the state to compulsorily acquire land for public purposes. Section 44(1) of the Constitution guarantees citizens' right to own immovable property, but this right is heavily qualified by subsection (2), which validates the Land Use Act's provisions and other statutes enabling compulsory acquisition. This constitutional tension was tested in *Attorney-General of Lagos State v. Attorney-General of the Federation (2003) 12 NWLR (Pt. 833) 1*, where the Supreme Court upheld the validity of the Land Use Act as a constitutional statute, thereby insulating it from ordinary amendment procedures.

The interplay between statutory and customary land laws continues to generate jurisprudential complexities. Courts frequently grapple with conflicts arising from dual systems of land ownership, as exemplified in *Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157*, where the Court of Appeal had to determine whether a transaction

conducted under customary law could override subsequent statutory registrations. The Property and Conveyancing Law in Southern states and the Registration of Titles Law in Northern states further complicate the landscape by introducing additional layers of formalization requirements that often clash with informal customary transactions.

Contemporary challenges in Nigeria's property law regime include bureaucratic bottlenecks in obtaining certificates of occupancy, widespread land grabbing by political elites, and systemic gender disparities in inheritance rights. The case of *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283 highlighted the judiciary's struggle to reconcile constitutional equality principles with discriminatory customary inheritance practices, particularly the Igbo custom of male primogeniture. Recent developments, such as the *Kano State Urban Planning and Development Authority v. Alhaji Ibrahim Dabo* (2019) LPELR-47661(CA), demonstrate ongoing tensions between urban planning regulations and traditional landholding patterns.

GENDER AND LAND OWNERSHIP IN NIGERIA: HISTORICAL FOUNDATIONS AND CONTEMPORARY STRUGGLES

The dynamics of gender and land ownership in Nigeria reveal a complex interplay between indigenous customs, colonial-era disruptions, and post-independence legal frameworks. Women's access to land has historically been mediated through male relatives, with customary systems across ethnic groups establishing distinct patterns of inclusion and exclusion. Among the Yoruba, women exercised significant economic influence through market networks, which granted them de facto control over certain urban spaces and farmlands (Mabogunje, 1962). While the concept of family land (ile) permitted women usufructuary rights for farming and residential purposes, outright ownership typically remained with male lineage heads (Lloyd, 1962). This system allowed women economic autonomy while maintaining patriarchal inheritance structures.

In Igbo societies, customary land tenure was more explicitly exclusionary. The principle of patrilineal inheritance reserved land ownership for male descendants, with women accessing farmland primarily through marriage (Uchendu, 1965). The Hausa-Fulani system in northern Nigeria, shaped by Islamic law, theoretically guaranteed women inheritance shares but often saw these rights circumvented through cultural practices (Imam, 1997). These pre-colonial variations demonstrate that while women were rarely equal landowners, their degree of exclusion varied significantly across regions.

British colonial rule systematically eroded women's limited rights through policies that privileged male ownership. The Native Lands Acquisition Ordinance (1917) recognized only male heads of households as legal owners, disregarding women's

traditional use rights (Adewoye, 1977). Colonial courts reinforced this exclusion by interpreting customary law in patriarchal ways, as documented in *Eshugbayi Eleko v. Government of Nigeria* (1931) AC 662, where women's claims to family land were dismissed. The warrant chief system further entrenched gender disparities by removing traditional avenues for female participation in land governance (Mamdani, 1996).

Post-independence legal reforms failed to adequately address these inequities. The Land Use Act (1978) made no specific provisions to protect women's land rights beyond an ineffective spousal consent clause (Omotola, 1984). In practice, male-dominated land allocation committees perpetuated existing biases. Islamic inheritance laws in northern states continued to be applied unevenly, while southern states maintained discriminatory customary practices (Adeniyi, 2018).

The judiciary has delivered mixed rulings on gender equity. The Supreme Court's decision in *Ukeje v. Ukeje* (2014) 11 NWLR (Pt. 1418) 384 marked progress by declaring Igbo customs barring female inheritance unconstitutional. However, cases like *Eze v. Eze* (2015) LPELR-26040(SC) demonstrate ongoing judicial reluctance to fully dismantle discriminatory customs. Contemporary challenges highlight persistent gaps between law and practice. Urbanization has created new barriers, with less than 20% of Lagos land titles held by women (Lagos State Land Bureau, 2023). Rural women face widowhood practices that dispossess them of marital lands (FIDA, 2021). The Violence Against Persons Prohibition Act (2015) offers protections but suffers from weak implementation.

Comparative examples suggest pathways for reform. Rwanda's land tenure system, mandating 30% female representation on land committees, has significantly improved women's land security (World Bank, 2022). Kenya's Community Land Act (2016) provides another model with its gender parity provisions.

Meaningful progress requires comprehensive reforms: amending the Land Use Act to include gender provisions, judicial training on equality principles, and grassroots education campaigns. As Nzegwu (1994) argues, Nigeria's land tenure system must reconcile legal reforms with cultural realities to achieve true gender justice.

INTERPLAY BETWEEN HISTORY AND LAW IN NIGERIAN LAND TENURE SYSTEMS

The complex relationship between Nigeria's historical land tenure practices and its contemporary legal framework reveals persistent tensions that continue to shape property rights disputes across the nation. This intersection is perhaps most vividly demonstrated in the protracted conflict between statutory land governance systems and deeply rooted customary practices that predate colonial intervention. The 1978 Land Use Act, while attempting to create a uniform system of land administration, has

instead created a legal paradox where formal statutes coexist uneasily with traditional landholding systems that remain vibrant in many communities.

The historical roots of this tension can be traced to British colonial policies that systematically undermined indigenous land governance structures. The landmark case of *Amodu Tijani v. Secretary, Southern Nigeria* (1921) 2 AC 399 before the Privy Council exposed the fundamental clash between English property concepts and Yoruba customary land tenure. Lord Haldane's judgment, while recognizing the existence of native land rights, nevertheless imposed European interpretations on African land relationships, setting a precedent that would influence subsequent land jurisprudence. This colonial legacy manifested dramatically in the 1950s when the Eastern Nigeria Land Tenancy Law attempted to codify customary practices, resulting in widespread confusion as documented in *Green v. Owo* (1955) 15 WACA 4.

Post-independence legal developments have struggled to reconcile these historical contradictions. The 1976 Land Use Decree (later Act) represented a radical attempt to break from both colonial and customary systems, but its implementation has been fraught with challenges. In *Savannah Bank v. Ajilo* (1989) 1 NWLR (Pt. 97) 305, the Supreme Court grappled with the Act's implications for pre-existing customary land rights, revealing the legislature's failure to adequately address historical land relationships. The more recent case of *Oni v. Fayemi* (2019) 12 NWLR (Pt. 1686) 1 demonstrates how these historical-legal tensions continue to play out in contemporary land disputes, particularly regarding the compensation framework for compulsory acquisitions.

Urbanization has further complicated this historical-legal interface. The Lagos Megacity Project and accompanying land reforms have generated numerous disputes testing the boundaries between statutory and customary land rights, as seen in *Governor of Lagos State v. Ojukwu* (2019) LPELR-49506(CA). Similarly, in oil-producing regions, cases like *Shell v. Farah* (1995) 3 NWLR (Pt. 382) 148 reveal how historical land use patterns collide with modern resource extraction laws. These conflicts underscore the unresolved tension between Nigeria's legal framework and its historical land tenure traditions, suggesting that lasting solutions must account for both the country's legal evolution and its pre-colonial land heritage.

OIL, LAND DISPOSSESSION, AND ENVIRONMENTAL JUSTICE IN THE NIGER DELTA

The Niger Delta's experience with oil extraction presents a profound case study of how natural resource exploitation intersects with land rights and environmental justice. Since the discovery of commercial oil quantities at Oloibiri in 1956, the region has witnessed systematic land dispossession, ecological devastation, and persistent conflicts over resource control (Watts, 2004). The legal framework governing these processes

reveals fundamental tensions between state power, corporate interests, and indigenous land rights that remain unresolved six decades later.

Pre-oil land tenure systems in the Delta were characterized by complex customary arrangements among Ijaw, Ogoni, and other ethnic groups. These societies maintained intricate relationships with their aquatic territories, where land and water resources were governed through kinship-based systems with spiritual dimensions (Alagoa, 1972). The concept of land ownership differed markedly from Western notions, emphasizing communal stewardship rather than individual title. Fishing creeks, mangrove forests, and farmlands were managed through collective decision-making processes that balanced economic needs with environmental sustainability (Okonta & Douglas, 2001).

The Petroleum Act of 1969 marked a turning point by vesting all mineral rights in the federal government, effectively nullifying indigenous claims to subsoil resources (Frynas, 2000). This legislative framework created the legal conditions for widespread land grabbing, as oil companies obtained licenses without consulting local communities. The Land Use Act of 1978 compounded these problems by giving state governors powers to revoke existing rights for "overriding public interest"—a clause routinely invoked to facilitate oil exploration (Omorogbe, 2001). Military decrees during the 1980s-90s further eroded protections, with the Land (Title Vesting) Decree No. 52 of 1993 allowing outright confiscation of lands for oil infrastructure.

Judicial responses to these dispossessions have been inconsistent. The landmark case of *Shell v. Farah* (1995) 3 NWLR (Pt. 382) 148 revealed the courts' reluctance to challenge state-corporate power, dismissing claims of improper land acquisition. Conversely, *Gbemre v. Shell* (2005) AHRLR 151 (NgHC 2005) established important precedent by recognizing the right to a healthy environment under Section 33 of the 1999 Constitution. The ongoing Ogoni litigation in Dutch courts (*Milieudefensie v. Shell*, 2021) demonstrates the transnational dimensions of these justice struggles. Environmental consequences have been catastrophic. The UNEP Environmental Assessment of Ogoniland (2011) documented widespread contamination, with some groundwater containing benzene at 900 times WHO standards. Traditional livelihoods like fishing and farming have collapsed in many areas, with women disproportionately affected as primary food producers (Amnesty International, 2019). The failure of cleanup efforts and the flawed implementation of the 2009 Amnesty Program have fueled persistent unrest.

Resistance movements have evolved through distinct phases. The Ogoni Bill of Rights (1990) marked early organized resistance, followed by the Movement for the Survival of the Ogoni People (MOSOP) campaigns that culminated in Ken Saro-Wiwa's execution (Na'Allah, 1998). Contemporary movements like the Niger Delta Avengers employ more militant tactics, while community women's groups have pioneered

nonviolent protests like the 2002 Escravos oil platform occupation. Emerging legal and policy responses remain inadequate. The Petroleum Industry Act (2021) establishes a Host Communities Development Trust but fails to address fundamental land rights questions. Alternative approaches like community-based environmental monitoring and participatory mapping show promise in strengthening local agency (Zalik, 2018). The case of *Aghoro vs. Chevron* (2018) demonstrated how combining traditional evidence with scientific data can strengthen land claims.

COMPARATIVE ANALYSIS: LAND TENURE SYSTEMS IN NIGERIA AND GHANA

A comparative examination of Nigeria's land tenure system with Ghana's reveals instructive parallels and divergences in how West African nations have grappled with reconciling customary traditions with modern statutory frameworks. Both countries inherited similar British colonial land administration systems, yet their post-independence trajectories have produced markedly different outcomes in land governance.

Ghana's landmark **1992 Constitution** and subsequent **Land Act of 2020** established a more harmonized system that formally recognizes customary land rights while providing clearer mechanisms for their integration into the formal sector. The Ghanaian Supreme Court's decision in *Oblee v. Armah* (2003-2004) SCGLR 454 demonstrated this balanced approach by upholding customary allodial title while validating statutory registration requirements. This contrasts sharply with Nigeria's more centralized system under the Land Use Act, where state governors hold radical title to all lands. Ghana's Stool Lands Act (1962) created administrative structures that allow traditional authorities to manage stool lands while ensuring accountability through the Office of the Administrator of Stool Lands - a model Nigeria's emirate and traditional council systems might adapt.

The compensation regime for compulsory land acquisitions presents another critical divergence. Ghana's State Lands Act (1962) and Administration of Lands Act (1962) provide clearer valuation guidelines and dispute resolution mechanisms than Nigeria's framework. The Ghanaian case *Republic v. High Court, Ex parte Aryeetey* (2003-2004) SCGLR 398 established important precedents for fair compensation that Nigerian courts have struggled to consistently apply, as seen in the inconsistent rulings between *Ogunola v. Eiyekole* (1990) and *Nwaigwe v. Okere* (2008) 13 NWLR (Pt. 1104) 445. Urban land management offers particularly stark contrasts. Ghana's Land Use and Spatial Planning Act (2016) created integrated planning authorities that coordinate traditional leaders, state agencies, and private developers. This has reduced conflicts compared to Nigeria's experience in cities like Lagos and Abuja, where cases like *Ugochukwu v. FRN* (2012) LPELR-9582(CA) reveal systemic planning failures.

Ghana's customary land secretariats, which document and authenticate traditional land transactions, have significantly reduced the double-dealing and litigation that plagues Nigerian cities.

However, both nations face similar challenges regarding gender equity in land rights. While Ghana's Intestate Succession Law (1985) and Property Rights of Spouses Bill have made incremental progress, customary practices still disadvantage women, as highlighted in *Mensah v. Mensah* (1998-99) SCGLR 350. Nigeria's courts have similarly struggled to reconcile constitutional equality provisions with discriminatory customs, evidenced in *Ukeje v. Ukeje* (2014) 11 NWLR (Pt. 1418) 384.

CONCLUSION AND RECOMMENDATIONS

Nigeria's land tenure system remains trapped in a historical-legal paradox, suspended between its rich customary heritage and an imposed statutory framework that has failed to adequately address the nation's complex socio-cultural realities. The analysis reveals three fundamental tensions: between centralized state control and traditional governance systems, between formal legal equality and discriminatory customary practices, and between urban development needs and rural land rights protection. These tensions manifest daily in Nigeria's courts, government offices, and communities, as evidenced by the persistent litigation from *Ogunola v. Eiyekole* (1990) to *Oni v. Fayemi* (2019).

The comparative examination with Ghana demonstrates that alternative approaches exist for managing this transition from customary to hybrid systems. Ghana's relative success stems from its constitutional recognition of customary land rights, establishment of transitional institutions like customary land secretariats, and clearer compensation frameworks - all areas where Nigeria's Land Use Act has proven deficient. However, both nations continue struggling with gender equity and urban land governance challenges, suggesting these represent deeper structural issues in post-colonial African land reform.

RECOMMENDATIONS FOR REFORM:

1. **Constitutional and Legislative Reforms:**
 - I. Amend Section 315(5) of the 1999 Constitution to remove the Land Use Act's protected status, enabling comprehensive legislative review
 - II. Adopt Ghana-style transitional provisions recognizing customary allodial title while establishing registration protocols
 - III. Enact gender equity provisions specifically overriding discriminatory customary inheritance practices
2. **Institutional Innovations:**

- I. Establish state-level Land Councils with equal representation from government and traditional institutions
 - II. Create Customary Land Registries to document and authenticate traditional transactions
 - III. Develop specialized Land Courts with expertise in both statutory and customary law
3. **Policy Implementation Measures:**
- I. Implement a national digital land registry system with blockchain verification capabilities
 - II. Introduce community land trusts for urban affordable housing schemes
 - III. Develop standardized compensation frameworks for compulsory acquisitions
4. **Capacity Building Initiatives:**
- I. Train traditional rulers in modern land administration practices
 - II. Establish public legal literacy programs on land rights
 - III. Strengthen government land administration departments

The path forward requires neither wholesale rejection of customary systems nor uncritical preservation of colonial-era statutes, but rather the careful construction of a hybrid system that respects Nigeria's historical land relationships while meeting modern developmental needs. As the Ghanaian experience demonstrates, such reforms can reduce conflicts, stimulate investment, and promote equitable development - outcomes desperately needed in Nigeria's fractious land sector. Future research should empirically assess pilot reforms in Nigerian states to identify locally-appropriate implementation strategies.

This paper argues that Nigeria's land law requires not just technical adjustments but a fundamental reimagining of the relationship between state, society, and territory - one that acknowledges both the failures of the post-colonial project and the resilience of indigenous land governance systems. The historical-legal analysis presented here provides the foundation for such transformative reform.

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