

# LAND TENURE AND THE EMERGENCE OF EXCLUSIVE INDIVIDUALIZED RIGHTS IN LAND: EVIDENCE FROM THE NORTHWEST ZONE OF NIGERIA.

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## ABSTRACT

The study was aimed at providing information on the land tenure system in the north-west zone of Nigeria and on the evolution of the indigenous tenure system to one of exclusive individual rights in land. The locations surveyed were the Rano and Danbatta zones of the Kano State Agricultural and Rural Development Authority (KNARDA) and the Funtua and Ajiwa zones of the Katsina State Agricultural and Rural Development Authority (KTARDA). For each ADP zone, a sample of 60 farmers were randomly selected, giving a total sample size of 240 farmers. Data collection was by means of face-to-face structured interview, based on the 2002/2003 farm year and data were analyzed using percentages. The results showed the predominance of land acquisition via inheritance and purchase. The existence of exclusive individualized rights in land, on the other hand, was reflected in its predominance of permanent transfer parcels and the associated widespread ability to use and transfer land outside existing lineages through the right to sell land. The directions for policy recommendation included the creation of an enabling institutional and legal environment for more efficient land transactions such as the provision of official ownership certification to land owners, the development of a centralized public record of land tracts and the possessors of rights over these tracts; the maintenance of a functioning legal system and effective enforcement mechanisms; and the assignment and promotion of responsibilities in land resource use.

**KEYWORDS:** Land acquisition, land rights, north-west zone, Nigeria

## INTRODUCTION

Land tenure refers to the methods of gaining access to land and the associated arrangements. Tenure influences production, marketing, investment, public finance, conservation, employment, household decisions and social stability with its implications for foreign investment (Kula and Rogers, 1991). To a large extent, the nature of the permissive or restrictive conditions within the land tenure structure determines the extent to which citizens can be motivated to exploit or conserve, to pollute or improve land resource quality and to use wisely or unwisely the nation's land resources (Abalu and Ogungbile, 1976; Abalu, 1977).

Among the many issues relating to land in Africa, three are foremost: security of tenure, distribution of ownership and access, and management of natural resources (The World Bank, 2002). The present forms of tenure are regarded as not providing sufficient security to support investment, to facilitate mobility of resources needed in a dynamic economy, and to protect the vulnerable under increased population pressure and high mortality (The World Bank, 2002). As a result, there have been some suggestions towards the modification and restructuring of land tenure structures to make them more conducive and more responsive to improved use. The reasoning is two-fold. First, with increased uncertainty associated with insecure land rights, investment incentives are reduced and current consumption preferred. Second, with lower capital accumulation, the demand for variable inputs that are complementary to capital is also reduced (Feder, 1989).

This paper is organized as follows. The next two sections describe the nature of land tenure in Nigeria and the divergence of law from reality in land transactions. Section 4 contains the methodology. Section 5 presents results from our cross-sectional study in Kano and Katsina States of Nigeria, and Section 6 concludes with directions for policy.

## THE NATURE OF INDIGENOUS LAND TENURE

Due to lack of written documentary and statistical records, the nature of pre-nineteenth century management and

development of land resources in Nigeria are not well known. Not until 1900 was there a formal undertaking to define land tenure structure within which land resources could be managed and developed (Abalu and Ogungbile, 1976; Abalu, 1977).

Land tenure in Nigeria has its legal origins in the customary laws existing prior to British presence in the country. The legal aspects of an alien land law whose principles were fashioned in response to the conditions and the needs of the British government had their origins in the Native Lands Acquisition Ordinance of 1910, which was subsequently amended in 1916 and 1962 (Abalu, 1977). The ordinance declared all land to be native land, but did not define the word "native" nor did it state the nature of the rights the natives had to land. The ordinance also made no mention of individual user rights. The argument was that individual farmers, not having secure private rights to land, may not be able to claim fully the returns on their investment (Migot-Adholla *et al.*, 1991). Furthermore, because land was viewed as an integral part of the social system and legitimate use was determined by birth, affinity, common residence, and social status or some combination of these, transactions were limited to the members of the lineage. This encumbered the emergence of market transactions in land in which access would have been determined by supply and demand factors and entrepreneurial ability (Migot-Adholla *et al.*, 1991).

In recent times, however, individuals' rights in land are no longer implicit in those of the community to which they belong by birth or by adoption. Though land for agricultural use is acquired predominantly through inheritance within the family, purchases, borrowings, leases and gifts of land have been occurring, not necessarily with the consent of every member of the land-owning group. Similarly, cultivators occupy their plots continuously not because they are unable to acquire land outside their community and not because they are unwilling to part with their existing environment. Historical records suggest that indigenous tenure had demonstrated remarkable flexibility in adapting to new farming technology and methods of exchange long before the colonial period (Hill,

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1963, Jones, 1980, and Bates, 1986). Recent enquiries suggest that land tenure in Nigeria is one in which the rights of individuals and those of the community and government exist side by side. Quite often, all or some of these categories of land rights may exist in a single society for different tracts of land. Furthermore, because of the multifaceted nature of (property) rights in land (private, communal, state or open access), the same tract of land can be categorized under more than one regime (Feder and Feeny, 1991).

### THE DIVORCE OF LAW FROM REALITY

In 1978, a national land policy in the form of Land Use Decree No. 6 of 1978 was introduced in Nigeria. This was informed by the following: First, there was no national land policy for guiding the development of land tenure systems that are conducive to the general economic development of the country. Second, there was a need to coordinate and streamline the sometimes conflicting dual systems of customary and statutory laws that regulate land allocation, use, and control. Third, there was the problem of providing and ensuring the security of those aspects of customary land tenure system that are conducive to agricultural development. Fourth, the problem of land tenure was interlaced with that of increasing agricultural productivity and the levels of rural income. Fifth, it was necessary to establish a procedure for resolving conflicts arising from transactions in land, especially the conversion of essentially arbitrary powers of compulsory acquisition into responsible powers so as to enable those adversely affected by the exercise of public purposes to ask for reasons that can be reviewed by third parties, so that all affected can participate in making and changing rules which govern the relations between them (Fabiya, 1982). The Act approached these issues through three strategies: the investment of proprietary rights in land in the state; the granting of user-rights to individuals; and the use of the administrative system rather than the market in the allocation of rights in land (Uchendu, 1978).

When the legal system (as exist in Nigeria today) decrees that land cannot be sold or can be transferred only with bureaucratic (and frequently arbitrary) approval, law gets divorced from reality (Feder and Noronha, 1987). This is because land continues to be sold or pledged, but in an informal market. The only result is that these sales or pledges are unenforceable in a court, so prices contain risk premiums that cause a deviation between the social value of land and its market value (Feder and Noronha, 1987). A basic conclusion is that, in practice, most land in Nigeria is privately-owned though, in theory, the government is, the only repository of land. This is supported by arguments to the effect that in societies where: (i) all land is constitutionally the property of the state, but exclusive use and occupancy rights are given to individuals under a contractual arrangement with the state (as in Nigeria); and (ii) these use rights are transferable with few limitations and the contract sufficiently long-term, then for most of the contract's duration, there is very little difference between possession of use rights and full property rights in land (Feder and Feeny, 1991). Even in locations where communal control over land under indigenous tenure systems still exists, farmers typically have secure use and inheritance rights. The evolution of land rights toward full privatization has been attributed to increasing commercialization and population pressure (Migot-

Adholla *et al.*, 1991). Agricultural intensification, which typically involves more continuous use of land, also enhances the process of privatization of rights over land. Though the predominance of land rights acquisition through inheritance may cause restrictions in transfers of land to members from other tribes or cultural groups, these are much less constraining than they were prior to the coming into existence of the land use act of 1978.

Another implication of an arrangement in which countries such as Nigeria vest title to land in the State, so that individuals have rights only of use and occupancy is that, in theory such individuals have a duty to observe use and access rules determined by the controlling (or management) agency of the State and the agency, on the other hand, has a right to determine the access and use rules. In practice, however, there is a gross lack of observance of duties with respect to use rates and maintenance of land and individuals have often acted without regard to the interest of others in complete violation of their duty to undertake only socially acceptable uses and to observe access rules as stipulated by the State. Thus, the land tenure system is one characterized by unrestricted transactions in land as well as by lack of responsibility in land use, thus fostering the emergence of a land market and unrestrained exploitation of land resources. According to Abalu (1977), land tenure structures that fail either to sustain desirable land use practices or fail to impede undesirable ones would result in externalities. He notes that "if and when externalities exist, there is a good chance that land resources will not be used wisely because the user either does not bear the full costs of misuse or does not have access to the full benefits of improved uses".

### METHODOLOGY

The study was carried out in two States in the north-west zone of Nigeria, namely: Kano and Katsina. These States have a high agricultural production potential and are considered representative in terms of biophysical characteristics and population density for the larger part of northern Nigeria (NARP, 1995; Ogunbile *et al.*, 1999). Given that each State is divided into three agroecological zones, two Agricultural Development Programme (ADP) zones, (one located in the southern-most and wettest parts of a State and the other in the northern-most and driest parts) were purposively selected in each State. Actually, purposive sampling ensured that one does not end up with a sample concentrated in one ecological zone. In Kano State, the actual survey took place in Rano (wet) and Danbatta (dry) ADP zones, while in Katsina State, the survey took place in the Funtua (wet) and Ajiwa (dry) ADP zones. The unit of analysis was the individual farm operators. A total of 240 farmers, consisting of 60 farmers from each ADP zone were randomly selected, based on the sample frame of farmers obtained from the ADP zones. Data collection was through face-to-face structured interview conducted on the selected farmers during the 2002/2003 agricultural season by four trained interviewers, themselves ADP staff, in each of the two States. The data collected were analyzed using descriptive statistics.

### RESULTS AND DISCUSSION

To provide an overview of tenure regimes predominant in the study regions, Table 1, displays the percentage of parcels acquired under various methods.

Table 1: Mode of land acquisition in Kano and Katsina States (percentage of total parcels).

Metho of acquisition	Kano State		Katsina State		Average
	Rano	Danbatta	Funtua	Ajiwa	
Inherited	57.42	55.77	40.35	53.54	51.77
Purchased	31.19	44.23	50.00	46.46	42.97
Gifted	-	-	0.88	-	0.22
Rented	2.48	-	6.14	-	2.155
Borrowed	8.91	-	2.63	-	2.885

Source: Field Survey, 2002 - 03.

The majority of parcels were acquired through inheritance, usually paternal from father to son or sons. Land sales involving the outright transfer of land for cash were the second most important method of acquisition of land. The percentage of inherited and purchased lands together in all the sampled locations accounted for over 94.74 percent of all land acquisitions. Other methods which occurred much less frequently were borrowings, rentings and gifts, in decreasing order of importance. In Nigeria, land sales have been reported to have began in the southern provinces even before the colony of Lagos was ceded in 1861 and to have been common in northern Nigeria in the first decade of the twentieth century (Rowling, 1946). Ega's (1979) survey of three villages in

Zaria, Nigeria, showed that 18 percent of those surveyed had obtained their lands by purchase. He notes that "there is a significant prevalence of illegal commercial transactions in land and considerable mobility of land. In particular, purchase has become an important means of acquiring land".

The rights that farmers in the study regions perceived they had over individual parcels of land are summarized in Table 2. Within each study region, the incidence of various use and transfer rights are shown for three types of land categorized by the breadth of transfer rights existing in the parcel--- consistent with the approach adopted by Migot-Adholla *et al.* (1989) in their field surveys in Ghana, Kenya and Rwanda between 1987 and 1988.

Table 2: Incidence of rights in Kano and Katsina States by level of security (percentage of fields for which rights exist).

	Kano State						Katsina State						Average		
	Rano			Danbatta			Funtua			Ajiwa					
	LD <sup>1</sup>	WL <sup>2</sup>	PT <sup>3</sup>	LD	WL	PT	LD	WL	PT	LD	WL	PT	LD	WL	PT
<b>Use Rights</b>															
Grow annual crops	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Grow perennial crops	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Make permanent improvements	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
<b>Transfer Rights</b>															
Rent the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Pledge the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Mortgage the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Bequeath the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Give the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Sell the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
Register the land	11.39	0.0	88.61	0.0	0.0	100.0	8.77	0.0	91.23	0.0	0.0	100.0	5.04	0.0	94.96
<b>Total number of parcels</b>		202			156		114			127				149	75
<b>Population density (P km<sup>-2</sup>)</b>			276						162					219.0	

Source: Field survey, 2002-2003

<sup>1</sup>LD = limited duration<sup>2</sup>WL = within lineage<sup>3</sup>PT = permanent transfer

The first is "limited duration" land; which includes those fields for which the farmer has no permanent transfer or alienation rights. The "within lineage" category describes parcels that may be permanently transferred but only within the family or lineage (that is, through bequest). The third are "permanent transfer" lands which may be alienated outside the lineage through the right to sell.

Most land rights were found on permanent transfer parcels. For example, the percentage of fields that can be sold by farmers (without approval) is 100 percent in both Danbatta and Ajiwa zones and 91.23 percent and 88.61 percent in Funtua and Rano zones respectively. The implications are two-fold. First, the majority of farmers possess the ability to influence or make decisions on the use and

transfer of the fields that they cultivate. Second, rights approaching individual ownership are widespread in the study regions.

It has been hypothesized that the greatest level of security corresponds to the "permanent transfer" parcels, while the "within lineage" and "limited duration" lands represent middle level and low level security, respectively. This ordering is based upon two factors. First, it is assumed that some permanent alienation ability confers greater security than the case of no permanent alienation ability. Second, the ability to sell land usually supersedes the ability to alienate land within the lineage (Migot-Adholla *et al.*, 1989).

Abalu (1977), argues that in locations in which land for agricultural use is acquired mainly through inheritance, one would expect a high incidence of fragmented land holdings (Table 3).

Table 3: Fragmentation of Operated Land in Kano and Katsina States (percentage of households)

Number of parcels	Kano State		Katsina State		Average
	Rano	Danbatta	Funtua	Ajiwa	
1-2	23.33	50.00	76.67	68.33	54.5825
3-4	60.00	43.33	23.33	31.67	39.5825
5-6	15.00	6.67	0.00	0.00	5.4175
7-8	1.67	0.00	0.00	0.00	0.4175

Source: Field survey, 2002 - 03.

According to Blarel *et al.* (1992), partible inheritance logically leads to fragmentation when farmers desire to provide each of several heirs with land of similar quality. The fragmentation of land holdings into non-contiguous tracts has been noted to have adverse effects on agricultural production. These include increased travelling time between fields (hence lower labour productivity and higher transport costs for inputs and outputs); negative externalities such as reduced scope for irrigation and soil-conserving investments as well as the loss of land for boundaries and access routes; and greater potential for disputes between neighbours (Abalu, 1977; Blarel *et al.*, 1992).

#### CONCLUSION AND DIRECTIONS FOR POLICY.

The indigenous land tenure systems, to a large extent, appear to be adapting efficiently to changes in relative factor scarcities. This is reflected in the emergence of markets for the sale and rental of land, and in the trend toward increased privatization of land rights. For this process to continue, it is important that the government does not impose unnecessary restrictions on the ownership and transfer of land. Though unfettered land sales and rentals have often been legislated against (as is observable in the provisions of the Nigerian Land Use Act of 1978) in the belief that this will prevent excessive concentration of land among the rich and the dispossession of the poor, this concern is, in practice, rarely justified and may be more appropriately addressed through farm-size ceilings without inhibiting land markets and preventing more efficient allocations of land between farmers with different management skills or factor endowments (Migot-Adholla *et al.*, 1991). Rather than restricting land markets, governments should create an enabling institutional and legal environment for more efficient transactions. This is informed by the following: (i) the institutional arrangements necessary to provide incentives and reduce uncertainty and asymmetric information are often not well developed or are largely absent in the rural areas of many developing countries; and (ii) the judicial and police systems are often understaffed or underpaid, which creates conditions for rent-seeking and for a slow process of property rights enforcement (Feder and Feeny, 1991).

One institution which will help reduce or eliminate ownership uncertainty is the provision of official ownership certification to land owners (for example, titles). The

enhancement of tenure security has been hypothesized to lead to increased demand for inputs and land improvement by farmers if the increased security of tenure implies a greater likelihood of reaping the benefits from such activities (Feder *et al.*, 1988; Lutz and Young, 1990). Increased security may also lead to a greater supply of credit from lenders, especially if it leads to acceptance of land collateral and its subsequent commoditization (Feder and Orchan, 1987; Migot-Adholla *et al.*, 1989).

A centralized public record of land tracts and possessors of rights over these tracts or the establishment of a voluntary system for recording details of land transactions and the interests of the different parties would also be appropriate. This arrangement will give individuals who are considering buying or renting land from others a way to verify that the rights they are about to purchase do indeed belong to the seller or lessor (Feder and Feeny, 1991).

The maintenance of functioning legal and effective law enforcement systems capable of protecting property rights and of enforcing all duly recorded contractual arrangements are necessary as well. In the absence of such public services, each individual will increase his private allocation of resources for enforcement through the use of, for example, guards or elaborate fences (Feder and Feeny, 1991). Studies have, however, revealed that it is more efficient to reduce risk (at least partially) through a public good (judiciary, police), than through individual actions only.

The existing land tenure structures in Nigeria which permit and foster unaccountability of land resource exploitation are not suited to the uses of scarce resources such as land in the face of deteriorating quality and must therefore be altered. According to Abalu (1977), this is made worse by the lack of systematic rules and regulations to promote optimal use of land resources. The acquisition and assignment of rights in land must be accompanied simultaneously with the insistence on the observance of certain strictures on use and the assignment, promotion, and to some extent, the enforcement of responsibilities in land resource use. Thus, there is need for developing an enduring system for land use management with adequate incentives for local inhabitants with ownership right over land to refrain from socially unacceptable uses and to manage land not only for

the benefit of himself but also on behalf of society, including its present and future members. Similarly, there surely is no reason why leases cannot have clauses outlining acceptable and prohibited practices. According to Bromley and Cernea (1989), such contracts should contain performance criteria defining conditions under which the terms of the lease shall continue to be honoured by the lessor.

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