

# Using the New Continuum of Land Rights Model to Measure Tenure Security: A case study of Itaji-Ekiti, Ekiti State, Nigeria

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## Abstract

*Tenure security in developed countries is generally explicit while in developing countries it is generally implicit. To reduce poverty, empower the poor, and ensure economic growth, security of tenure is essential. The rural poor and vulnerable groups in Nigeria have tenure insecurity, yet the extent of this insecurity is unknown in many rural communities. This study used the New Continuum of Land Rights Model (NCLRM) developed by Whittal (2014) to measure the tenure security of the rural poor in Itaji-Ekiti. A single case study approach using qualitative method was adopted for the research design. Four land right types emerged from the study: informal occupation, formal occupation, customary, and registered leasehold. These land rights are interpreted using the triple vertical axes of legitimacy, legality and certainty. Despite strong legitimacy and legality, the results show that tenure insecurity exists in Itaji-Ekiti due to weak certainty. Bad land governance is the cause of this. The use of NCLRM in Itaji-Ekiti provides an understanding of the tenure situation. This model has the potential for use in the development of pro-poor land policy that could be used as an example in other developing countries.*

*Keywords: Tenure Security, Land rights, Land Tenure, New Continuum of Land Rights Model and Land Administration.*

## 1. Introduction

Land tenure security for the urban and rural poor in developed countries is well understood while in developing countries many controversies exist (Simbizi, 2016), in which Nigeria is not an exception. This relates to lack of acceptable indicators to measure tenure security, the meaning and concept of land tenure security, and lack of pro-poor land tenure security evaluation framework (Durand-Lasserve & Selod, 2009). Many definitions of land tenure security exist (Place, Roth and Hazell, 1994; Dekker, 2006; Knights, 2010). As per Dekker (2006), tenure security is perceived as the certainty of having rights to land for a specific period of time. “The perceived tenure security refers to the perception of a landowner towards the risks of eviction or losing his land by a third party and the ability to reap the benefits from it” (Subedi, 2016, p. 48). Land tenure is described by

how land is allocated, managed, used and transferred in a society (FAO, 2002), this is described by how land is held or owned by individuals or groups (Knights, 2010, p. 19).

In order to improve and make explicit land tenure security in developing countries, it is required to develop a well-designed land administration system (LAS) that will provide tenure security for the urban and rural poor (Musahara, 2006; Byamugisha, 2014; Enemark et al., 2014). Many developing countries, such as Mozambique, Rwanda, Ethiopia, and Ghana are developing a land policy that provides such security (Norfolk and Tanner, 2007; Simbizi, 2016). An appropriate LAS as a means of eradicating poverty while ensuring sustainable and economic development brings the shift to the development of LAS in developing countries (Van Der Molen, 2003). Improving the LAS of a country depends on the nature of the national land policies of such countries. For a developing country's land policy to include the urban and rural poor, community participation is essential (Hull and Whittal, 2017). This will allow for integration between policy and needs of the people (*ibid*). In the case of Nigeria, community participation was not part of the process of policy development. Nigeria's land policy also faces significant implementation challenges (Abugu, 2012). For example, the abuse of power by the Governor, public service and bureaucracy, and lack of political will.

Secured land rights of the majority of the urban and rural poor in developing countries may reduce poverty and improve their livelihood (Musahara, 2006; Deininger, 2003). Good governance in land administration is seen as a significant challenge in securing the land rights of the urban and rural poor (Grover *et al.*, 2007), which is also applicable in Nigeria. Securing the land rights of the rural poor in developing countries relies on the formal means of securing land. This works against the interest of the rural poor due to bureaucratic procedures of land registration system, the cost of registering titles, it encourages subdivision of land, and it does not accommodate the wide range of tenure found in real-life situations (Van Asperen, 2014). The non-consideration of alternative approaches to land rights may cause insecure land rights in developing countries.

The saying that "You can't improve what you can't measure" is the first reason behind the motivation of this study (Kaplan and Norton, 1996, quoted by Simbizi, 2016, p.30). The state of tenure insecurity in rural areas of Nigeria is unknown. To improve land tenure security in Nigeria, there is need to measure the state of land tenure security. The study uses the rural people in Itaji-Ekiti, Ekiti State, Nigeria (see section 3 for justification) as the subject of study. The second motivation is the recent land dispute between Itaji-Ekiti and Ayede-Ekiti. During the land dispute, farmers were arbitrarily displaced, and three lives were lost (Ogundele, 2017).

The measurement tool for land tenure security used in this study is the New Continuum of Land Rights Model (NCLRM) developed by Whittal (2014) - see figure 1. It assesses the legitimacy, legality and certainty of tenure on three vertical axes against land rights mapped on the horizontal axis as a means of measuring tenure security. Legitimacy can be measured using material evidence in the form of records of Rights, Restrictions and Responsibilities (RRRs) in land transactions and demarcation using beacons or any visible markers, while legality refers to the use of formal law to

protect RRRs and transaction in land (*ibid*). Certainty is when there is absence of corruption, conflict and natural disasters and non-abuse of the use of power (*ibid*).

The NCLRM has been tested in Giyani, a rural South African village (Whittal and Rikhotso, 2016). A case study approach using qualitative method was used for data collection. Additional information on land rights was collected from the Office of Surveyor-General, the Deeds office and the office of National Geospatial Information: Department of Rural Development and Land Reform. The modelling in Giyani was successful, and it discovered that if the model is to be applied, an in-depth understanding of the land rights types and tenure situation is required. The correlation between land value and land rights is of utmost importance. Land value relates to the value people ascribe to land which is not in relation to capital markets or value used in property taxation. The value ascribed to land in this instance cut across the different land right types (customary, traditional, formal and informal occupation, and registered leasehold etc.). The modelling relies on data from both qualitative and quantitative measurements. The reliability of data collected was found in that one of the researchers was a native of Giyani (Whittal and Rikhotso 2016). However, the model has not been tested in areas where mobility and land ownership disputes exist, and this is where the study fits in, using the case of Itaji-Ekiti, in Nigeria. The aim of this study is to test the NCLRM in Itaji-Ekiti, identify problems associated with its use and make recommendations for future use.

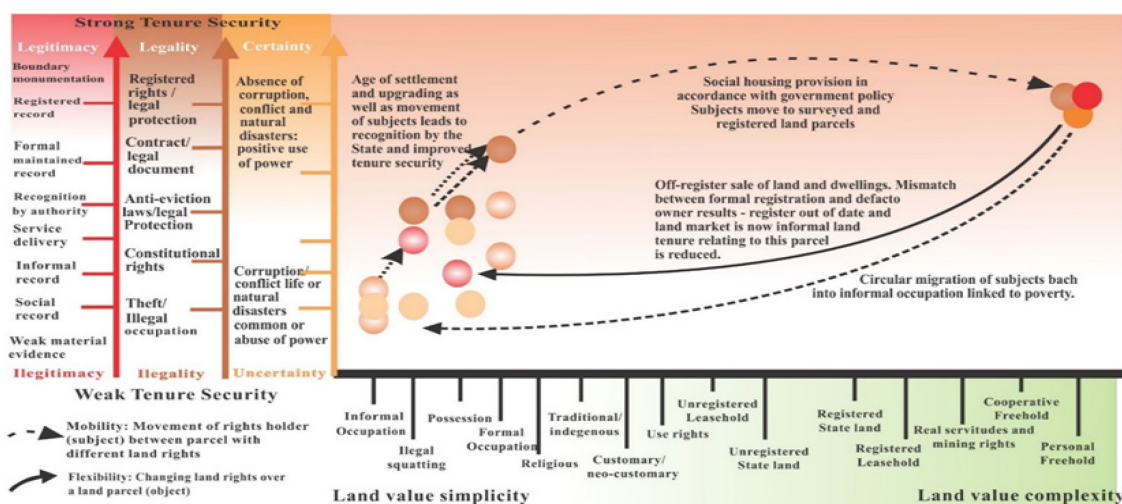


Figure 1. The New Continuum of Land Rights Model (Whittal, 2014, p. 23, used with permission)

## 2. Methods

Case study is applied when conducting a study about a phenomenon in its real-life context using multiple sources of evidence (Yin, 2009). As per Creswell (2013), case study allows researchers to explore in-depth the programme, events, activity, or process, of one or more individuals. As a result, a case study strategy is applied in this study. Silva & Stubkjaer (2002) stated that methodologies employed in cadastral systems are mainly those of social sciences. They further said that case study methodologies are widely used in cadastral and land administration research (see for

example Akrofi, 2013; Ali, 2013; Subedi, 2016; Obeng, 2018) because they relate to people and land, which is governed by social, political and economic conditions as well as by legal and technical factors.

For this research, a single case study is adopted because it provides a vibrant picture of the phenomenon under study. It also provides a better understanding of the case and contributes to knowledge. A single case study allows a case to be understood in its own context, which is used to study an intrinsic, unique, unusual, revelatory, or extreme case (Denzin and Lincoln, 1998; Yin, 2009).

To ensure rigour is maintained, multiple sources of evidence are used. These include questionnaires and semi-structured interviews. The questionnaires were used to collect data about the tenure situation in Itaji-Ekiti from land rights holders. Semi-structured interviews were directed to key informants as this allows for consistency in the questions being asked and allows the key informants to provide elaboration on tenure situation in Itaji-Ekiti. The use of the semi-structured interview questions allows the interviewer to explore the interviewee's social and personal experience of land tenure in the case study. Interviews were conducted with key informants from three groups of people: the land rights holders, community heads and heads of formal institutions. The institutions are Office of Surveyor General, Ekiti State; Ekiti State Housing Corporation, Ado-Ekiti; and the Works Department of the Oye Local Government, Oye-Ekiti. The interview is a preferred method of collecting data in this case study because rich, detailed information about tenure can be obtained. Interviews were conducted from October 2017-January 2018. The snowball sampling method was used for the residents. In total, three community heads, three heads of formal institutions and ten land rights holders were interviewed.

The interviews were recorded after seeking the consent of the key informants. Field notes were also used to obtain reliable information during the data acquisition. The recorded interview was transcribed and coded in a spreadsheet. Graphs were plotted from the coded data (see figures 4 to 7) and the output from the processed data was used to model the tenure situation in Itaji-Ekiti.

The NCLRM is used as a measurement tool for analysing tenure situation in Itaji-Ekiti. The vertical axis analysis of legitimacy, legality and certainty is conducted while the horizontal axis analyses the land rights types in Itaji-Ekiti. To effectively use the NCLRM requires understanding of (1) the land policy used in the respective community, (2) customary norms and values of the community concerned, and (3) land tenure system of the community concern. Construct validity was ensured by interviewing three different key informants (community head, land rights holders and government officials). This is to allow for cross-examining of different ideas on land tenure situation in itaji-Ekiti. The researcher and independent observer carried out the data coding. This was cross-checked to strengthen internal validity.

### 3. Itaji-Ekiti Case Study Area



Figure 2. Itaji-Ekiti Rural Landscape

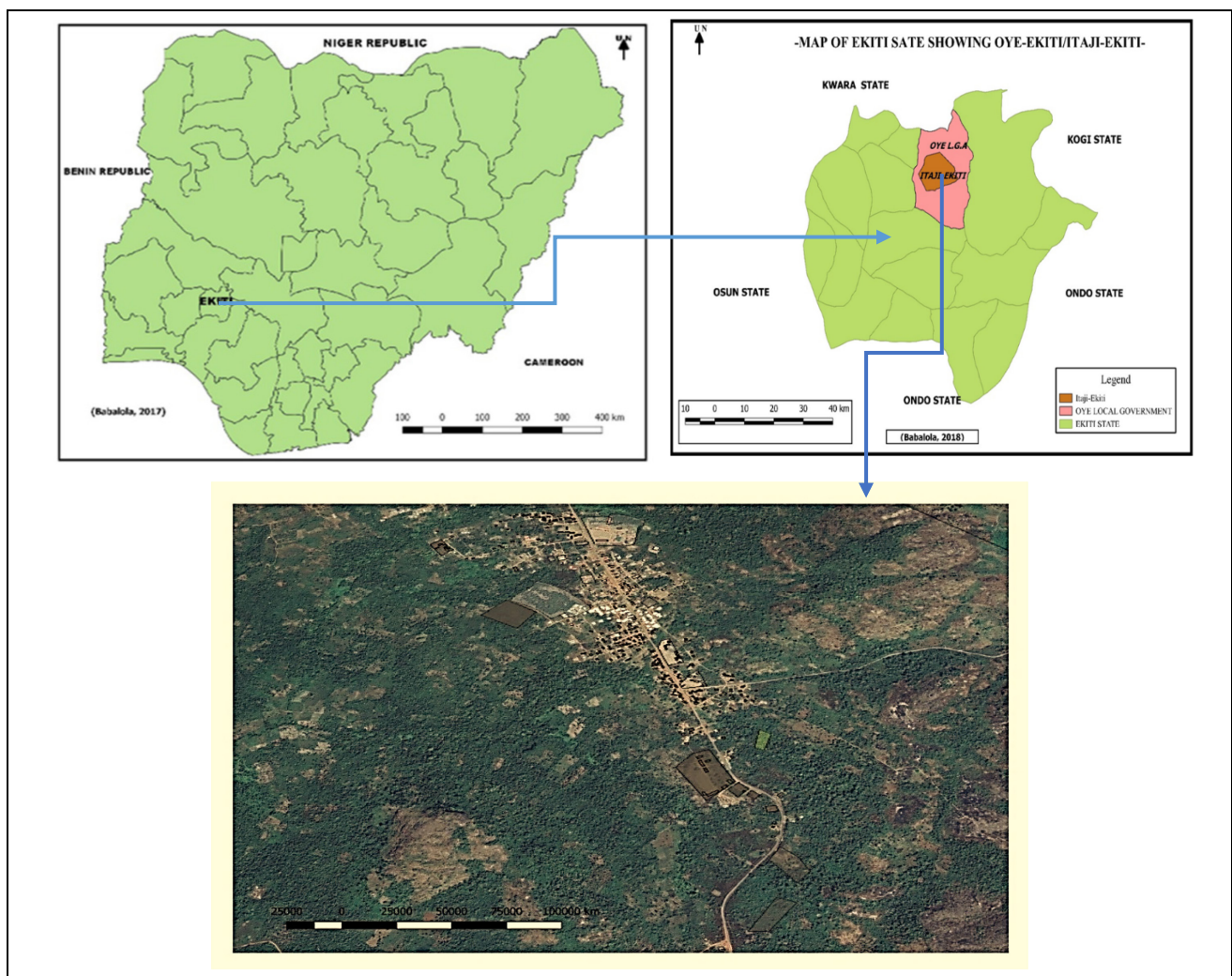


Figure 3. Study Area

Itaji-Ekiti, Ekiti State, Nigeria, was selected for the case study for two reasons:

- The researcher is a native of Itaji-Ekiti, so granting the audience from the community head and the people for sensitisation and awareness programme was more accessible, and
- There was a dispute between Itaji-Ekiti and Ayede-Ekiti in 2017.

Itaji-Ekiti and Ayede-Ekiti have co-existed for many centuries. History has it that Ayede-Ekiti is a tenant to Itaji-Ekiti, meaning that Itaji-Ekiti gave Ayede-Ekiti land for settlement. In the 20th century, a land dispute occurred between the two communities which resulted in many years of land litigation in court. The judgement was later in favour of Itaji-Ekiti. In 2017, a similar land dispute occurred between the two communities towards the southern part of Itaji-Ekiti farmland. Residents of Ayede-Ekiti left their community to attack the people of Orisumbare Street, Itaji-Ekiti on their farm which resulted in the death of three persons from Ayede-Ekiti and one person from Itaji-Ekiti was seriously injured (Ogundele, 2017). The present land dispute case is in State High Court Ado-Ekiti, Ekiti State Nigeria. The state government also established a panel of enquiry to examine the dispute between the two communities. The panel consists of the Surveyor General (SG) of the state, a retired High court judge, representatives of the boundary commission and stakeholders. The rural landscape of Itaji-Ekiti is shown in figure 2.

Ekiti State is located in the southwest zone of Nigeria with sixteen local government areas. Oye-Ekiti is one of these Local government areas, and it is located in the northern part of Ekiti State. Itaji-Ekiti is a rural community from Oye local government area (see figure 3).

## **4. Data Processing and Results**

Section 2 discusses the data acquisition. This section explains how the data obtained is processed and analysed. The results are presented in subsequent sections. The interview questions were analysed using Microsoft Excel spreadsheet which allows for the extraction of information needed. Whittal (2014) published tables of land tenure forms, and these aided the analysis. The results were later represented in bar charts to aid in their interpretation.

### **4.1. Measures along the horizontal axis**

To model land rights using the NCLRM, horizontal and vertical axis measures have to be analysed. This section presents the horizontal axis measures. The horizontal axis measures include perceptions of land value, land tenure types/land rights, subjects of land tenure and tenure transaction in Itaji-Ekiti.

#### *4.1.1. Perception of land value*

Views of land values from the land rights holders showed high acceptance of land value as a community (60%) while 10% respectively for deity, nature and natural resources were held as values of land. This clearly showed that land is widely held as a community. Land as a community is given a “conceptual value as a traditional and cultural value, homeland value, social network values” (Whittal, 2014, p. 31 with reference to the table on land values). The community head stands out from the view of their subjects by chosen physical space and nature as their understanding of land values. Capital and community were held in the form of land values by the head of the formal institution. The distribution of land values by the interviewees is depicted in Figure 4 .

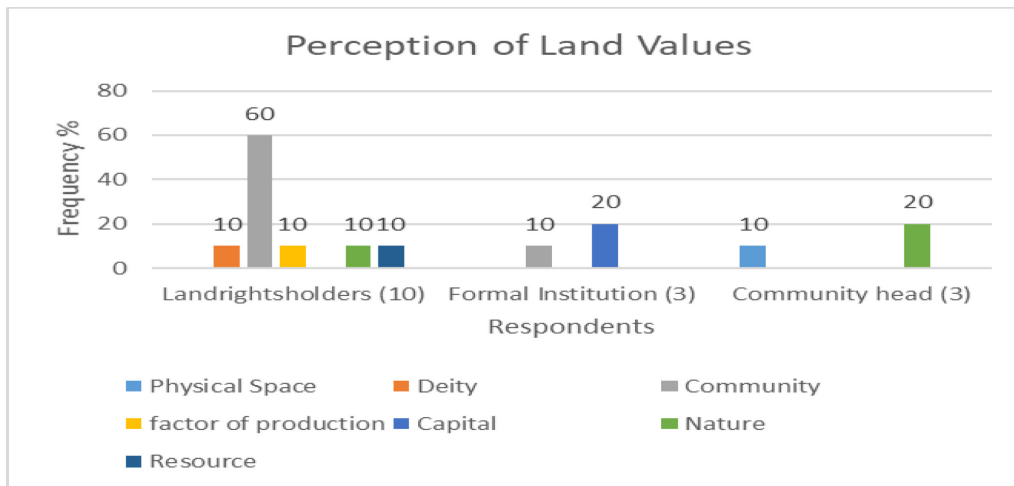


Figure 4. Perception of land values by the interviewees

4.1.2. Land Tenure/Land Right Types Held in Itaji-Ekiti

60% of land right holders recognised their form of land tenure as customary and formal occupation of land. This is because when land is purchased, and a survey is done, it is termed to be a formal occupation because the government has granted the request to occupy by the survey that was carried out. 20% of land rights holders and 10% of community heads saw physical occupation as a form of land rights or land tenure because you cannot occupy what you do not own.

30% of community heads also strongly support the customary form of land tenure as the form of land tenure of the people. They believe that the customary tenure is the means of accessing land in Itaji-Ekiti. 20% of the heads of formal institutions also recognise the customary form while 10% recognise the traditional form of land tenure in this case study area. Formal occupation of land as a form of land tenure is identified by the head of formal institutions interviewed. The head of the formal institution does not recognise informal occupation as a form of land tenure (see figure 5). See Table 2 (Whittal, 2014) for detailed description of land right types and associated rights as used in this study.

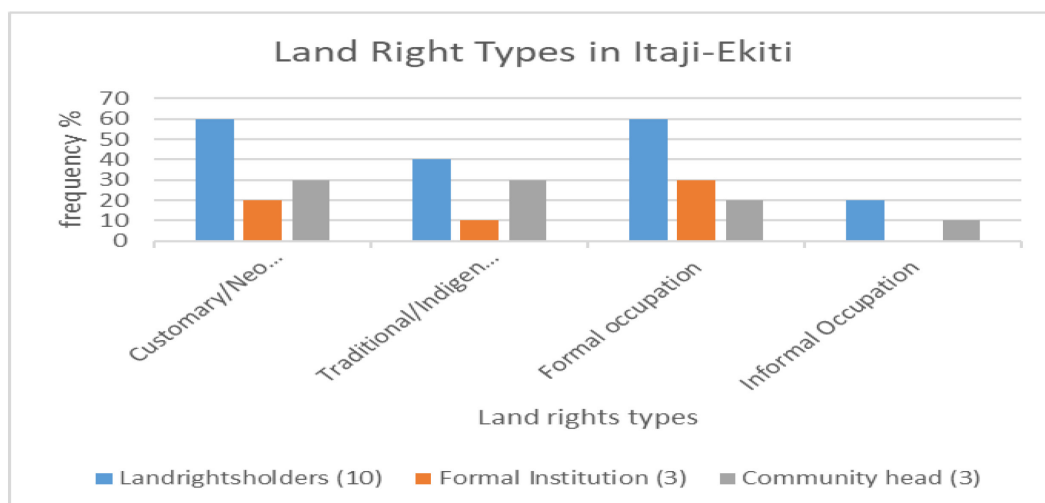


Figure 5. Land Tenure/Land Right Types held in Itaji-Ekiti

4.1.3. Subjects of land tenure in Itaji-Ekiti

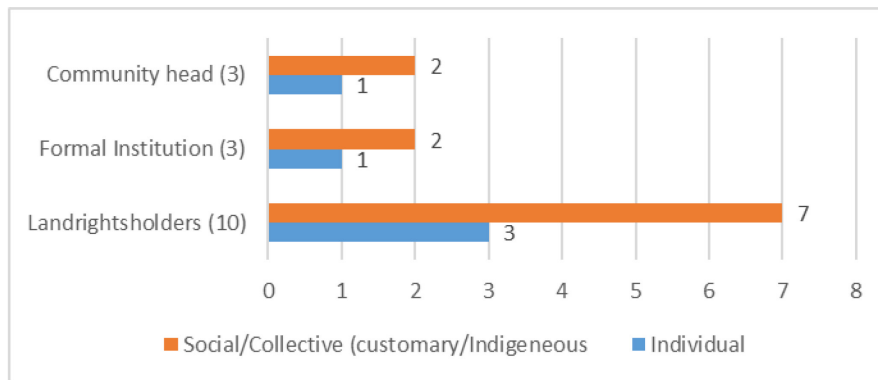


Figure 6. Land Tenure/Land Right Types held in Itaji-Ekiti

The primary form of landholding in Itaji-Ekiti is a common form of land tenure while individual holding of land as a form of formal occupation exists. Majority of residents in Itaji-Ekiti hold land in the way of collective tenure while title holders are deemed to own land by formal occupation. The responses of the three respondent's groups are represented in Figure 6.

4.1.4. General Tenure Transactions in Itaji-Ekiti

60% of land rights holders interviewed acquired their land through inheritance while 20% acquired it through purchase and another 20% through a gift. All heads of formal institutions interviewed acquired their land through purchase. 20% of community heads interviewed acquired their land through inheritance while 10% of community head acquired it through purchase (see Figure 7). Overall, inheritance through the male lineage is common in Itaji-Ekiti. Women have no land access except when she has the economic power to acquire one. The people in Itaji-Ekiti believed they could sell their land without government consent, except when the process of transfer is to be formalised. In that case, a government agency in charge of affidavit will be involved. The land rights holder believes they can sell their land without informing the customary leader; this aspect put a little doubt if they have confidence in their customary leaders. Customary leaders interviewed also support the land rights holders' view that they can sell without informing customary leaders, but when a dispute arises from such a sale, the sale will be null and void. All heads of formal institutions interviewed have the same notion that landowners can sell their land once the land is not within government acquisition. The Land Use Act (LUA) of 1978 empowers the Governors of the respective states to acquire land for the overriding public interest. Many of these lands are acquired in vast expanses without compensation. Hence land owners lay claim to ownership of such land.



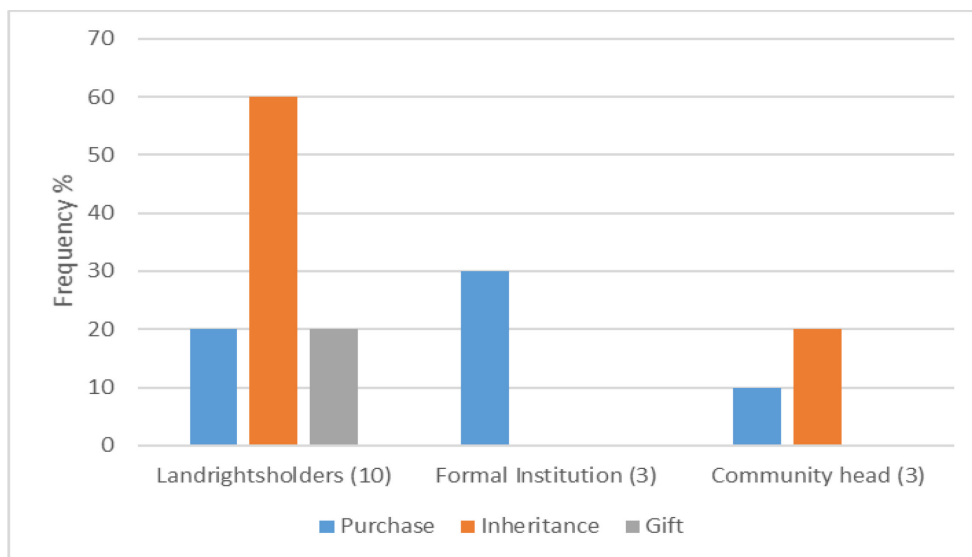


Figure 7. Land Tenure Transaction in Itaji-Ekiti.

## 4.2. Measures along the Vertical axis

### 4.2.1. Measures of Legality

Several interview questions were directed at legal protection on land, possession of legal documents on land rights on land, the presence of land allocation and advisory committee (LAAC), and illegal occupation. The evidence received shows a level of legality. Land tenure types identified in Itaji-Ekiti are recognised by the Land Use Act of 1978, except for the informal occupation. 100% of land rights holder interviewed were not aware of the existence of the LUA while all heads of formal institutions and one of the community heads interviewed are aware of its existence. Most of the residents have no title to land, and they claimed that inheritance is the mode of land access which is enough for them to be secured on their land. The LAAC is not in existence in this Local Government area. The community has a land allocation committee in charge of land management.

Implementation problem of the LUA showed that land rights holders could not be secured on their land because the committee saddled with land administration by the LUA is not functioning and the composition is inadequate for rural poor to enjoy land according to customary law. All sections that should ensure tenure security of the rural poor are deficient; hence conflicts arise in customary land tenure system.

### 4.2.2. Measures of Legitimacy

Several interview questions were directed at the evidence for land rights, boundary demarcation, boundary monumentation, control of land transactions, how the title is secured in the customary land, land transfer, and how land is managed. In customary land, most residents relied on natural features to demarcate their boundaries and have no legal document supporting their boundaries. One community head and heads of formal institutions have documents showing their boundaries. Different boundary markers are used in demarcating boundaries. Those that have documents depicting their boundary are surveyed by a surveyor. Government beacons are placed at every

corner. Government beacons are issued by the Surveyor Council of Nigeria (SURCON). In Itaji-Ekiti, not all land rights holders can afford to register their title.

#### *4.2.3. Measures of Certainty*

To measure certainty, some portion of the interview question asked about bribery/corruption, conflict and natural disaster, land use control, and the use of power. Some forms of royalty are paid when allocating land; this is referred to as ‘informal payments’ such as given kola nuts and palm wine. The offering of kola nuts and palm wine is based on customary way of showing appreciation when land is allocated. All heads of formal institutions interviewed agreed that some forms of corruption exist in land administration. There are land disputes among families and between communities, while there are hardly any disputes within the town. There is no documentary evidence which showed an abuse of power by either the community head or head of the formal institution. An abuse of power can only be expressed by someone who was a victim of such abuse. There is a division on whether there is a collaboration between the customary leaders and the head of the formal institutions.

## **5. Land Rights Continuum in Itaji-Ekiti**

The land rights continuum model in Itaji-Ekiti was developed by interpreting the qualitative and quantitative data analysed above into the continuum of land rights model by Whittal (2014). The land rights types identified in Itaji-Ekiti are indicated along the horizontal axis in Figure 8. The legitimacy, legality and certainty of these land rights types are interpreted on the vertical axis.

### **5.1. Land rights types identified in Itaji-Ekiti (Horizontal Axis)**

In Itaji-Ekiti, the land rights of informal occupation, formal occupation, customary, and registered leasehold are identified. These land rights are held by different subjects but refer to the same land object. All land parcels consist of elements of traditional and customary land.

Existing land rights in Itaji-Ekiti are grouped into four, which are represented in figure 8. Three colours of orange, pink and green spots and one group of spots to their right are used to identify the vertical axis. The first column from the left relates to the “informal occupation” as shown on the horizontal axis in Figure 8. This land is held mainly by farmers who are non-indigene but are recognised by the community head and his institution. Next to it is the “formal occupation” with a survey plan registered in the Surveyor General’s office. The customary/traditional column is next to it, which has no survey plan. The last group is the registered leasehold to the far right of the axis. The group of spots to the right shows there is unregistered customary land used for public purposes (schools, churches, post office, health centre etc.). To the right of the model is an arrow (continuous) indicating the flexibility of land rights type in the case study area.

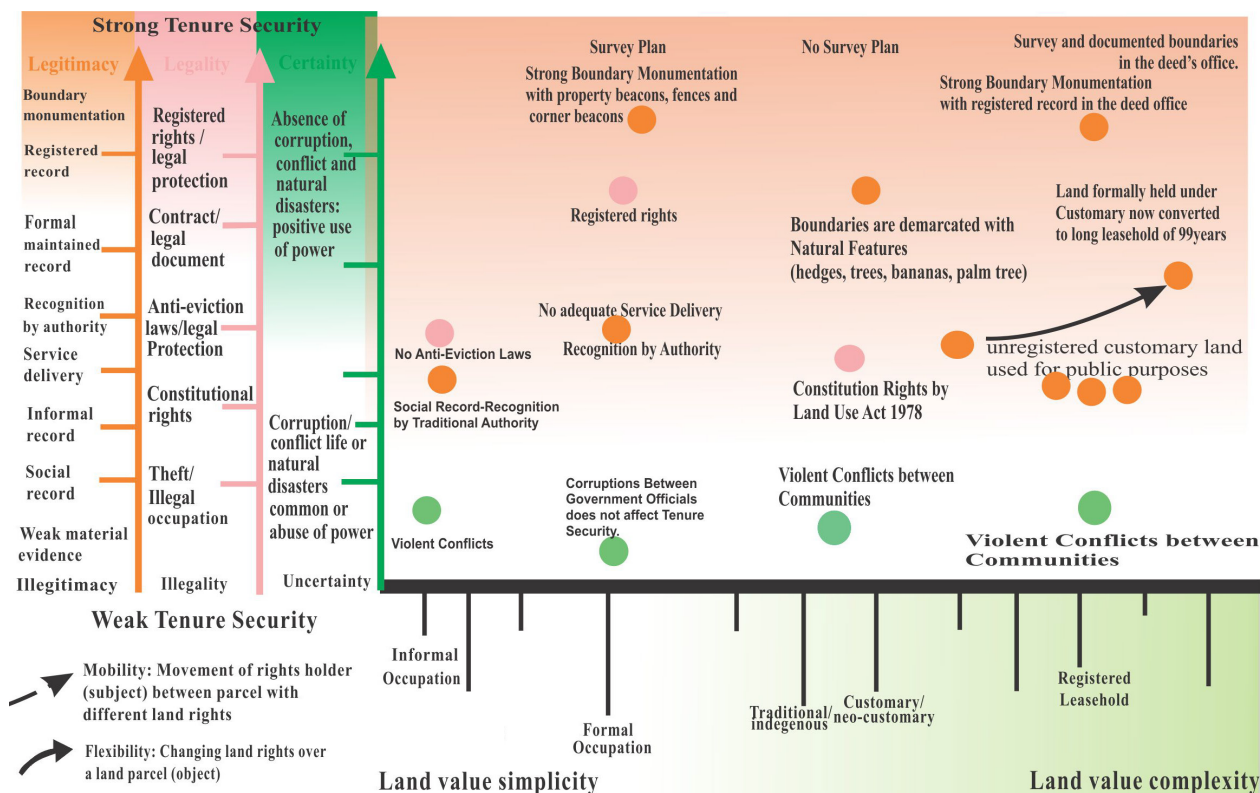


Figure 8. Continuum of Land Rights Model in Itaji-Ekiti

## 5.2. Indicators of land tenure along the vertical axis

The vertical axis triplet is formed by the land tenure indicators of legitimacy, legality and certainty. These are differentiated by different colours from the lower part of the vertical axis with a light colour to saturated colour at the upper part of the axis which indicates that land tenure strength is weaker at the lower part and stronger at the upper part. In the body of the graph, elements of the same colour are used to represent each of the land tenure indicators. Three colours of orange, pink and green were used to represent each of the land tenure indicators respectively. In 'informal occupation', pink was used to represent no anti-eviction laws in the body of the graph while orange is used to represent the existence of a social record that is recognised by a traditional authority. This gives some form of legitimacy and legality. The green colour is used to indicate violent conflicts exists which implies uncertainty (see Figure 8). The informal occupation is on customary land which are by non-indigenes for family dwelling and farming purposes.

For 'formal occupation' an orange colour was used to represent a strong boundary monumentation which represents strong legitimacy. Pink is used to represent registered rights which informs legality of land rights holders, and green is used to represent corruption exists between government officials. The orange colour represents no adequate service delivery this shows weak legitimacy and recognition by the authority which represents strong legitimacy (see Figure 8). The customary land rights have no documented survey plan and rely on natural features to demarcate boundaries. Pink is used to represent rights are recognised by the constitution with the support of the LUA which indicates strong legality. Green represents conflicts between town and

families exists. This indicated strong uncertainty for customary land rights holders. Although conflicts are rare in the town, they are ubiquitous on farmland.

The last column represents the registered leasehold. These are formerly held customary land but now converted to registered leasehold. It has very strong legitimacy and legality but weak certainty. Uncertainty exists because violent conflicts can still displace the holder of such lease but can be reclaimed back through court intervention.

All aspects of land rights types identified in Itaji-Ekiti are shown on the model. Land rights of people with no documentary evidence were recorded and shown in each column. Strong boundary monumentation exists for formal occupation (property beacons and corner beacons) while informal occupation has weak boundary monumentation. The traditional and customary rely on natural features (streams, rivers, mountains and trees) to demarcate boundaries.

### **5.3. Flexibility and Mobility**

Flexibility is the change in land rights on the same parcel of land (Whittal 2014); this is represented by a solid arrow in Figure 8. Mobility, on the other hand, is the movement of people to land with different land right types (*ibid.*); this would be indicated by a dashed arrow, but flexibility exists in Itaji-Ekiti while mobility does not. Land rights are changed over a land parcel. Customary or traditional land is upgraded to the formal occupation or registered leasehold. When customary land is transferred legally, and the buyer applies for a certificate of occupancy, the land rights type is changed from customary to long-term leasehold. Since land right holders in Itaji-Ekiti do not change location, mobility could not be tested. For non-indigenes who reside outside the town but own land within the community, the form of their land rights from where they are coming from couldn't be established.

## **6. Conclusion and Recommendation**

The paper applied the NCLRM to measure tenure security of the rural poor in Itaji-Ekiti. The NCLRM employed legitimacy, legality and certainty to describe tenure of the different land right types identified in Itaji-Ekiti. Four land right types were identified as informal occupation, formal occupation, customary and registered leasehold. Out of the three triplets of tenure indicators, the certainty for all the land right types is weak as conflicts can affect any of the land rights types. This is because the issuance of a certificate of occupancy is never a guarantee of ownership. The use of the model revealed the extent of tenure insecurity in the rural community of Itaji-Ekiti. Tenure insecurity is caused by bad governance in land administration. This is because the national land policy is effective in urban areas and dysfunctional in the rural areas.

The model also showed that statutory (formal or registered leasehold) is more secure than the informal and customary forms of land occupation. The use of NCLRM in Itaji-Ekiti is successful as the model had been able to show the aspects of legitimacy, legality and certainty of different land rights types which are found in real life situation. The modelling using NCLRM used qualitative

approach for data acquisition which gives a rich, deep understanding of the land tenure and land rights identified.

The great strength of the model is the use of legitimacy, legality and certainty as indicators for examining the tenure situation in a real-life context and accommodating different land rights types without making one more important than the other. With this model, the modelling for land values was a challenge. The respondents' views of value ascribed to land were only analysed and not modelled. Hence future use of the model should endeavour to model land values and land rights. The model enables policymakers on land to see how tenure security can be ensured by considering the rural poor in land law enactment. During the testing of NCLRM, it was discovered that NCLRM could serve as a viable, practical pro-poor land tool in assessing tenure security of the rural poor. The continuous use of the model is recommended.

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