



AN ANALYSIS OF THE DIFFERENCE BETWEEN TRADITIONAL LAND TENURE SYSTEMS AND THE LAND USE ACT, NO 6 OF 1978, NIGERIA.

Okafor Chigozie Stella¹ and Udobi Nnamdi Alex^{2*}

¹School of Postgraduate Studies, Department of Estate Management, Faculty of Environmental Sciences, Nnamdi Azikiwe University, Awka, Anambra State.

²Department of Estate Management, Faculty of Environmental Sciences, Nnamdi Azikiwe University, Awka, Anambra State.

*Corresponding Author's Email: stellachigozie@yahoo.co.uk

Cite this article:

Okafor, C. S., Udobi, N. A. (2024), An Analysis of the Difference Between Traditional Land Tenure Systems and the Land Use Act, No 6 of 1978, Nigeria. Journal of Advanced Research and Multidisciplinary Studies 4(3), 90-103. DOI: 10.52589/JARMS-UBB0OSPQ

Manuscript History

Received: 16 May 2024

Accepted: 9 Jul 2024

Published: 19 Jul 2024

Copyright © 2024 The Author(s). This is an Open Access article distributed under the terms of Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International (CC BY-NC-ND 4.0), which permits anyone to share, use, reproduce and redistribute in any medium, provided the original author and source are credited.

ABSTRACT: *Land tenure systems are important aspect of any society and the very soul through which societies and countries advance in civilization as they define the manner in which land is held and managed in a society. Even though traditional land tenure systems and customary land tenure systems existed before now, the promulgation of the Land Use Act introduced a new system of land ownership which repealed every other existing laws and introduced uniformity in the land ownership systems as practicable across the country. This paper examines the traditional land tenure systems applicable in Igbakwu community, Ayamelum Local Government Area, of Anambra State together with the practicable general land tenure systems of the South East Zone, Nigeria while comparing it with the Land Use Act, 1978. The major aim of the paper is to analyse the difference between traditional land tenure system and the Land Use Act, No 6 of 1978 while enumerating the salient points obtainable in both systems. Members of clans and villages were interviewed while secondary data was obtained from textbooks and journals. Recommendation includes revision of the existing laws through consultations with professionals to reach a consensus and prevent the law from veering off its original objectives. The study however highlights the need for a more probable tenure system to tackle land distribution due to increase in population.*

KEYWORDS: Land, Land Use Act, land Tenure Systems, Traditional land tenure.



INTRODUCTION

Land is an important essential for existence in today's world. The earliest possible expert on lands existence is written in the book of Genesis, which laid emphasis on creation of the universe by an omnipotent being "GOD", prior to that the earth was described as formless and desolate, he created not only land but separated the land and water (which was named the sea) (Good news bible, 1979), which according to me was the very beginning of the existence of land. Several times I have wondered how the world would have been like without land, the so much dependence on land is obvious because almost all evolution on human existence and survival depends on it. However, according to the New York Times (1995), "a team of Canadian geologists say they have come up with a key piece of evidence to settle the question of lands existence where they said land arose as volcanically produced isles and islets which were carried on a kind of conveyor belt of plate tectonics and were eventually smashed together over the oens to form large land masses. They further described Canada as representing one of earths oldest land masses and believe the fault zone they uncovered is the remnant of a seam that formed 2.7million years ago as two pieces of Canadian puzzle came together. Several school of taught, have several believes depicting earths existence which spans from the believe that lands existence on earth is characterized by constant geological change and biological evolution, many believed earth's history to be dated 5.54 billion years ago. Though several school of taught have several experts based on research, it's obvious that 5.54 billion years ago is an era in which none of the scholars have truly experienced", it's obvious that the evolution of land is an existence which only the creator can relay the actually occurrence with facts and figures. In Nigeria, there is truly little or no article that discussed the evolution of land, though several articles dealt with land development, tenure etc. However, the over reliance on land by individuals makes land a very vital aspect of human existence as Nigerians depend heavily on land for shelter, food and survival. Land is predominantly a key asset and an existence which impacts positively on livelihoods. Its importance spans globally as the entire survival is deeply rooted in it. Okolo and Ogbuefi (2021) described land as an indispensable natural resources to man because human activities take place on it which leads to an increased demand of land. Various scholars see land as a free gift of nature with unique attributes which makes it stand out among other free gifts of nature which invariably might rely solely on land. However, Ifediora (2014) sees land as a common denominator where the peoples economic live lies on. Ever imagined a world without land where survival is basically dependent on rivers, lakes, streams, water, how will human beings survive in such a condition? And if there are no set rules governing land administration, then the environment will be characterized by chaos which might lead to adverse conditions and survival of the fittest. Hence, land tenure systems were put in place as a set of rules to fundamentally shape and regulate the land ownership structure of a given society. Maduekwe (2014) defined land tenure as 'the relationship, whether legally or customarily among people as individuals or groups, that define the means through which access is granted to rights to use, control and transfer land. Onifade (2024) described land tenure system as one of the most important issues that determines how the government manages land distribution and ownership. In Nigeria, land tenure is seen as a complex series of relationships between multiple institutions concerning the use of land and also constitute a set of rules and regulation that govern how land is owned, used, managed and transferred within a society (Mixta, 2021). The rules may be established by state or by custom, and rights may accrue to individuals, families, communities or organizations. However, land tenure invariably determines who can use land, for how long and under what conditions which implies that the holder of a particular land might not have actual legal ownership. According to Wikipedia



(2024) tenure signifies a legal relationship between tenant and lord arranging the duties and rights of tenant and lord in relationship to the land. In Nigeria, several land tenure systems existed in the various states of the federation before the promulgation of the Land Use Act. These tenure systems especially the traditional system which are also referred to as customary system existed as a set of rules guiding the use and administration of land. All these systems were practicable before the colonial era. Land in the traditional setting is held collectively by villages, clans, or community and is always managed in most cases by the village head or in the family setting by the head of the family, and the clan setting by the eldest member of the clan. In the cases above, each holds the right of administration on behalf of other members of each of the group. It might be worthy to note that in the described settings above no decision can be taken without a formal decision of other members but the head who is usually the oldest is respected and the final decision solely rests on them. Ayomide (n.d) described the customary land tenure system as a system of land holding predominant during the pre-colonial era where land was deemed not to be owned by individuals but by communities, villages, towns, families hold land in trust for all family members. From the above, it could be deduced that land in the traditional settings could be in two forms: the communal landholdings and the family land. The traditional land tenure system in Nigeria may differ based on the state, the region or ethnic group but for the purpose of this paper, the South East Zone, the Igbo tribe is described. Famoriyo (1973) observed three principles under the customary tenure: they include: “an individual’s entitlement to a land portion enough to feed him and his family; the fact that a member of a given family cannot dispose another of his stake in the family land; and the non-alienation of an allocated land without the consent of other family members”. In the traditional Igbo setting only male members of the family are allotted a portion of the family or communal land. Ayomide (n.d) further explained that the family is a very important unit in the communal land tenure system and in most cases the wife of a deceased member of the family is not allowed to inherit a portion of land. In Igbakwu, the wife of a deceased member of the family is allowed to use the land for subsistence farming, the oldest male child then automatically inherits such portion of land as they come of age. Several different practices existed for traditional land systems. The promulgation of the Land Use Act, No 6 of 1978 however repealed every existing law and have been used up to this day without amendment. Anyanwu et. al (1997) stated that the Land Use Act was enacted to satisfy the need for larger areas of land for agriculture and non-agricultural purposes: end racketeering and the unending litigations in land transactions due to rising demand for land; checkmate traditional land ownership that had constituted barrier to national development programmes; prevent a situation where on the death of a land occupier, inheritance problems arose in the form of excessive subdivision of holdings; cater for the need of security rights in land and sharpen governments sensitivity to a system in which only rich, powerful and influential owned. The Act’s promulgation was meant to bring sanity to an already chaotic system which made it nearly impossible to acquire land for public purpose. Government intervention brought uniformity in law as each region possess their own land administration law. Shobowale (2023) stated that while the Land Use Act may have democratised the land tenure system in Nigeria, the act is heavily criticised for creating bureaucratic bottlenecks in land acquisition, barriers to access and putting excessive administrative control in the hands of the governors. The complex created by the Act usually involves navigating multiple layers of government approvals, permits and licences. The Act was variously criticized for many flaws which includes rigidity, lack of flexibility, restrictions and overregulation which continuously hinder the maximization of land. However, the paper examines the traditional land tenure systems in Nigeria particularly that of Igbakwu, a village situate in Ayamelum Local Government Area of Anambra state. The paper shall also explore



the Land Use Act No. 6 of 1978 while analysing the difference between the traditional land tenure system and the Land Use Act. Both land administration systems will be described while highlighting the major differences within both systems.

THEORETICAL FRAMEWORK

TRADITIONAL Vs. CUSTOMARY LAND TENURE SYSTEMS

The early traditional Igbo society regarded land as a sacred and religious entity and therefore handled all aspects as such. The people practice a common traditional approach to land holdership and ownership as considered probable by the people and relates land to families, communities, and villages. Obioha (2008) was of the view that land to the Igbos is a property with religious, economic and political meaning. He further posited that the introduction of the colonial rule and the consequent change in the conception of land in Africa, as a result of economic and legal attributes of colonialism have led to the emergence of new and previously unknown land problem. A change which was brought about by new economic systems. The traditional land systems prior to colonialism are purely systems designated by each community to enhance land usage by members for the common benefits of all. The traditional system or customary land systems according to Maduekwe (2014) quoting NIALS Dictionary of African Customary Laws is a mirror of accepted usage; rules handed down orally from generation to generation which the persons living in a particular locality have come to recognise as governing them in their relationships between themselves and things. They must be in current usage. She further stated that to qualify as a customary law, it must be an existing native law and custom not that of bygone days, its observance must be binding and capable of being enforce, attaining force of law due to prolong usage. It is worthy to note that customary land tenure system existed pre-colonial era and some of the laws were predominantly unwritten. The law/laws are usually according to the believes of the people, therefore different laws existed in different Igbo communities and some might be almost same with unusual twists. In most areas, the land is vested in the King which in the Igbo language is referred to as 'EZE'. For other non-Igbo communities, it might be vested on the Emir, the Elders, Chiefs, Obas, and etc depending on the culture of the people. Okpala (2022) noted that customarily land rights are related to family and inheritance systems based on the concept of the group ownership of absolute right in land with individuals acquiring usufructuary rights, the land rights establish the basis for access to land resources and the opportunity to use land for the productive purposes. Oshio (1990) stated that the customary land tenure for southern Nigeria has roots in the traditional conception of land where land is conceived as a sacred institution by the 'chi' or god and as such belong to the dead, the living and the unborn. Therefore, it is inconceivable for any individual to claim ownership of land or part thereof or to sell it. The village head or the "IGWE" here is considered as a kind of trustee holding land for the village, community or the family. He does not possess absolute ownership whatsoever but rather possess a trustee kind of holdership, the land being vested on him. On customary tenancy, he stated that it is not a leasehold interest, a tenancy at will or a yearly tenancy and therefore has no equivalent to English laws. The customary tenant is a grantee of land and holds a determinable interest in the land which may be enjoyed in perpetuity subject to good behaviour of the tenant. He must pay yearly tributes to the grantor as an acknowledgement of the latter's overlordship and neither party can alienate the land without prior consent of the other. The interests are usually one of inheritance in most cases. For some tribe, the holder or owner can give his piece of land to a tenant for agricultural



purposes, the arrangement might be that of the receiver giving some of the produce from the land upon harvest to the owner. No rent is paid but each parties have to reach a consensus because most of the agreement is unwritten even though in some cases the agreement is done in the presence of an elder who usually serve as a witness. The traditional land system considered pledge of land to secure loan or for agricultural purposes but the alienation of land is considered a taboo as land was considered sacred and is meant to be kept for future generation. Maduekwe (2014) posited that two simple principles govern the alienation of land; "first the family head cannot alienate family property without consent of the family, and sale is voidable where such act is committed; second, a sale by principal members of the family in which the head of the family does not concur is void." However, upon the occurrence of such transactions, the owner has to prove that such a transaction has actually transpired. The above was only attainable with the introduction of the colonial rule where they established courts for customary law, prior to that such a transaction would have been unattainable as the tradition was upheld fully before the colonial era. It could be deduced from the above that the land tenure system under this heading could be divided into three (3); first the core traditional systems/customary tenure systems, second the customary land tenure during the colonial era and third the land tenure during the land use act. Each are almost the same with some little twists as the core traditional systems deviated from the original with the advent of the laws.

THE LAND USE ACT NO. 6 OF 1978.

Before the promulgation of the Land Use Act, customary laws existed which varied from one locality to another because of the different customs of the people, the arrival of the colonial Masters lead to the multiplicity of land laws which upon their exit led to law suits as there existed different laws for different state (Afribary, 2024) which includes land tenure laws, statutory land laws (southern and northern protectorates), and The Land and Native Rights Proclamation 1910. The Land Use Act's promulgation on the 29th of March, 1978 by the then Military Government of Olusegun Obasanjo was intended to introduce uniformity to an already defunct system and it heralded a new era where the whole federation adopts same Act unlike the pre-existing laws which were mostly regional. This was in an attempt to nationalize land and introduce a system that works effectively in order to ensure a probable land system in Nigeria. The Land Use Act has repealed the several state land laws that controls the land tenure system (Abatan, Musibau, Bankole, and Babarinde,2021). Nwocha (2016) opined that the Act aims principally at the effective and sustainable management and control of land in Nigeria particularly in a manner that gives government sufficient powers over the acquisition, transfer or otherwise assignment of land and land resources. Idowu and Akintola (2020) stated the following as the major objectives of the Act. They include:

- a. To remove bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating
- b. To streamline and simplify the management and ownership of land in the country.
- c. To assist the citizenry, irrespective of his status, to realise his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life.
- d. To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.

In as much as the intention was that of a more probable land administration for the masses upon promulgation, Idowu and Akintola (2020) asserted that no legislation promulgated in this



country has elicited so much controversy and criticism in the interpretation of its provisions as the Land Use Act. A lot of scholars believed that the Act failed woefully in fulfilling some of the reasons for its enactment as so many citizens are deprived of their rights to land. The poor masses are unable to have access to land with the increasing population and the Act favouring only the rich with absolute rights vested on the Governor of the state. The recent demolitions in Lagos state, have raised a lot of eye brows with the masses seriously questioning the rule of law and the provisions of the Act. The Lagos State Ministry of Environment as stated in the punch of 16th April, 2024 had given appropriate notices and also stated that none of the residents have appropriate titles to the land with the houses built on a water way. The above is truly a depiction of lawlessness as such a story would not have been the case, the law being fully practised.

By the section 1 of the Act “all land comprised in the territory of each state in the federation is hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act”. From the above, it could be deduced that the Act conferred absolute ownership to the Governor while removing the right of holdership from Nigerians as the Governor is to hold land in trust and would be responsible for allocations for individual resident in that state. Section 2 (1) (a) of the Act was basically on the control and management of land in urban areas which was vested on the Governor of each state while other lands according to section 2 (1) (b) shall be under the control and management of the local government within the area of jurisdiction of which the land is situated. The above inadvertently empowered the Local Government giving it rights of control and management for lands in the local government which means that the power of the governor is solely on the urban areas. Nigeria’s system of government is such that the local governments functions directly under the state and sometimes possess little or no power in such matters as land administration. Section (2) was basically about the establishment of a state body to be known as “the Land Use and Allocation Committee with the aim of advising the Governor on any matter connected with the management of land, resettlement of persons affected by the revocation of rights of occupancy and the amount of compensations payable under the Act for improvements on land. The Act further stated that the Governor determines the eligibility and the number of members for the committee and also mentioned the professions and number of years of qualification required for one to qualify as an eligible member of the committee (see section 2 (3)(a) and (b)). Section 2(5) of the Act introduced the Land Allocation and Advisory Committee to be established for the Local Government with same function as that of the state committee. Members are also determined by the Governor through consultation with the Local Government with the sole aim of advising on matters relating to land within the local government areas. Despite the power of administration vested on the local government over land, section 5 of the Act fully established the power of the Governor in relation to land, handing absolute power to grant statutory rights of occupancy to the Governor, whether the land is situate in the urban and non-urban areas. The same power was also handed over to the local government in respect of lands not in urban areas (See section 6) but the absolute right and control of land was vested solely on the Governor. Section 5 (b) and (c) was solely on the grant of easements appurtenant to statutory rights of occupancy and the rental demand on any land granted, the Section also stated on waivers, penalty for breach of any condition and extension of time for holders of statutory rights of occupancy. Section 6 (1)(b) and (1) (a) was strictly on the grant of customary rights of Occupancy for lands in local government area for residential, agricultural and other purposes and further discussed about the grant of land for grazing purposes and other purposes ancillary to agricultural purposes as may



be customary in local government area concerned. For agricultural purposes, customary right of occupancy cannot be granted for any land in excess of 500 hectares or 5,000 hectares for grazing, in such a case the act stated that only the governor can grant such rights of occupancy. The local government were also empowered pursuant to section 6 (3) to use and occupy land for public purpose. Section 3 of the Act however stated the power of the Governor to publish in the state Gazette areas designated as urban areas as determined by him. Section 9 of the Act further stated for certificate of occupancy to be issued as an evidence to persons holding either statutory right of occupancy or customary right of occupancy and further explained the terms and conditions of issuing the certificate together with the payment terms. Section 10 (a) and (b) provisions was strictly on the binding conditions for payment in certificate of occupancy for unexhausted improvements and fixed rents payable to the Governor in accordance to the provisions of section 16 of the Act. Section 16, however is basically on the various principles to be observed in determining rent to be fixed for a particular land or the terms and conditions of revising a previously fixed rent including the terms of occupancy. Section 21 and 22 comprised in part IV strictly prohibited alienation of customary and statutory rights of occupancy by assignment, mortgage, transfer of possession, and sublease without the consent of the Governor and the requirements for the holder to submit before the Governors consent can be granted for statutory right of occupancy (See section 22 (2)).

TRADITIONAL LAND TENURE SYSTEM OF IGBAKWU, ANAMBRA STATE.

Igbakwu community consists of a group of settlers who migrated from Aguleri, Anambra State in search of a wider space for cultivation of their agricultural produce especially the palm tree. The settlers ended up with the discovery of a serene and fertile land and have dwelled there for several thousand years. Land in Igbakwu is held in three (3) major different categories; the village land, the Kindred/clan land known as “Umunna” in Igbo language and the family land. The above tenure systems even though predominantly practised by most communities in Igbo land form the very backbone of land ownership in the community. Communal land tenure is usually not practised even though the community have some developed land for the benefit of the community which invariably belongs to the community. Such lands include land reserved for market, general purpose field for town activities and football, town hall and schools. Shrines are owned individually or by clans. Classification of traditional land tenure systems in Igbakwu community therefore includes:

- A. **VILLAGE LAND (ANA OGBE);** Village land tenure system comprises of land collectively owned by a village with the privilege of enjoying rights to ownership by every member of the village. Igbakwu community is comprised of four (4) villages, namely: Isiachelle, Isiokwe, Irato and Amagu. The village land according to Okolo & Ogbuefi (2021) further make up each community while some are retained as community land. The fact remains that community land does not exist in Igbakwu as each of the villages enjoys joint ownership of land situate in specific areas of the community which is further divided into Kindred/Clan Land.
- B. **KINDRED/CLAN LAND (ANA UMUNNA);** The kindred/clan land can be described as land collectively owned by members of the community group related by blood. The various villages are subdivided into clans and each clan collectively held their own land. To administer the use of land, the clan/Umunna elects a head who holds land in trust for other members of the clan usually the oldest and trusted member of the clan. Apart from holding land, he also organises the members of the clan and ensures that no decision is



made without the consent of other members of the clan. Therefore, members of each family are heavily represented on matters bordering land and such other matters as they may be required to participate in. Occasionally, he is required to spearhead the division of land among members who have come of age. Members to benefit from the land sharing exercise in my village must be part of the masquerade system termed “IBA MMANWU” and must be a member of the age grade system. The beneficiaries must be male and up to 20-24 years of age as they are seen as beginning bear responsibilities at that age. However, female members known as “the ADA” of the clan are not entitled to land but upon the demise of their husband for married “ADA’s” their husbands land reverts to them to hold in trust until the eldest son is of age. Therefore, invariably the eldest son is entitled to inherit the fathers land but that does not mean he will not benefit from the land sharing exercise of the ‘Umunna’ as the land is deemed to be his by inheritance. Currently, the families are expected to pay a certain amount for the cost of mapping out the land (Survey) for sharing. Apart from the survey fees no payment is required of any member.

- C. **FAMILY LAND (ANA EZINAUNO);** The family is comprised of the father, the mother and children in the nuclear form and consists of the father, the mothers, the children, the aunties, the uncles, and the cousins in the extended form. The family land however includes the earth or the soil thereof belonging to a family and is usually created by the father figure of the family and extended through generations. Allagoa (n.d) stated that “family land could be created in various ways such as by first settlement, by the will of the owner, by gift or allotment, by devolution via intestate death and by conveyance. The burden of preserving the family land rests first on the family head and subsequently on other principal members or family as a whole”. In Igbakwu community, the family land emanates from the kindred/clan land. This currently can be said to begin after allotment of land by the kindred or by first settlement which relates to the collectively owned family “Obi” belonging to the grand fathers. That major portion of the family land belongs to the eldest member of the family or collectively while other members upon land allocation would build or use for agricultural purposes their portion of the land received. Under the family land setting, the head of the family “the father” owns the land but in some cases the land might have been obtained through inheritance as the eldest son inherit the fathers land upon his demise. On the development on land, the eldest son might choose to divide and ensure that each son gets a portion of the development on the land even though belongs to him, the other sons upon allotment of land by the clan may choose to forfeit and move to his own land or retain the ownership of his own portion. From the above, issues always arise within the family settings when dealing with the extended family, where the head of the family has two or more wives in Igbakwu. However, to tackle that issue, the head of the family has to share his respective land in the presence of some of the elders when alive, otherwise it becomes a serious issue upon his demise.

DIFFERENCE BETWEEN TRADITIONAL TENURE SYSTEM AND THE LAND USE ACT NO 6, OF 1978.

The traditional land tenure systems and the Land Use Act were measures made readily available in order to streamline and simplify the management and ownership of land. These measures according to Otubu (2018) was motivated by the need to make land accessible to all while ensuring probable land tenure systems that benefits the masses. The Land Use Act, however share a bit of similarities and differences with the previous traditional systems as was practicable pre-colonial era. Though its intention was to unify land transactions, the authority



here was divested to the Governor as opposed to the traditional systems which covers an area and administered according to the believe of a people. The differences between the traditional tenure systems and the land use act are discussed below:

A. Vesting of Titles: there is a clear indication on the similarities shared by both tenure systems. The provisions under the Land Use Act is that of vesting on the Governors, Lands within the state in trust to administer for the common use and benefit of Nigerians. The position here is that of handing absolute power of land administration to the Governor, hence abolishing the rights of every citizen on land. Akinseye (2023) stated that the Land Use Act, 1978 in effect, altered the concept of land ownership tenure, which used to be in perpetuity to a period certain. In Nigeria, before the enactment of the Act, Land ownership structure and possession were forever and unfettered, the Act however took away the perpetual indigenous ownership tenure away and replaced it with limited ownership tenure. Though the traditional system practiced an almost similar structure of vesting land rights on the King (“IGWE”), the systems of right vesting varied according to town as each area practised the tenure system indigenous to its people. In Igbakwu community, clan, villages and family’s authority supercedes that of the “Igwe” who also belonged to a clan or family. Hence, it is believed he also belonged to an umunna hence cannot administer full control and management of land without proper consultations with the “Chiefs” who are properly selected from the various clans and villages. The “Chiefs” comprise of carefully selected elders from each clan who act on behalf of their clan members on such matters that may require deliberation, knowledge. They possess integrity and are always the mouth piece of the clan members/villages on land matters and such other matters as might require attention. The Clan/Umunna collectively own land but such lands are allocated to families for agriculture, residential and other purposes. Ownership structure is usually perpetual. Land allocations are done as eligible young men are ushered into the sacred masquerade setting known as “IBA MMANWU”. This entails the person has come of age and ready to shoulder responsibilities and such individuals are also considered as members of the age grade, hence at a certain age land are allocated to them. Female Clan members are however excluded as tradition abolished ownership of land by the females or “the Ada’s” as they are addressed in the village settings but a married “Ada” can continue to farm or hold the deceased husbands land in trust until the eldest son comes of age. However, the two land tenure systems disparity is more visible on the manner of trusteeship as one is a kind of absolute power of holdership with less limitations while the others holderships is limited to a certain area of jurisdiction.

B. On Control and Management of Land: a two (2) level management structure was created by the Land Use Act; the first is control at the level of the state Governor and the other is at the local government (Otubu, 2018). The Act further stated of the establishment of a state body the “the land use and allocation committee whilst listing its function and eligible members. Just like stated above, the Chiefs and Elders function in the same capacity but differ in the sense that the members of the state body are core professionals as appointed by the state Governor to function in the same capacity. The onus here might be that of disparity in the two setting as one is comprised of more educated professionals as the later was practicable before the pre-colonial era. The customary rights of occupancy were practised during the colonial era in the southern Nigeria, even with the abrogation of the laws, the Act reserved some rights to ownership relating to Customary rights of occupancy (section 9 (1) (b)). For the traditional land tenure systems, control and



management of land is solely on families, clans and the villages. Where the land is a family land, the control and management rests on the family, in the clan setting it rests solely on such elder as appointed by the members of the clan or 'Umunna' who acts as the manager and administer the use of land. Therefore, the head of the family seeks advice from the principal members of the family while the Governor seeks advice from the members of the Land Use and Allocation committee. The Act also stated the power of the local government in granting of land and the restrictions on the amount of area of land to be granted for agricultural purposes and for grazing (Section 6 (2)). From the above, there is a clear indication that Igbakwu traditional ownership system is based on both private ownership and collective ownership while the Land Use Act does not accept private ownership.

C. Transfer of Land: the traditional land systems practised pre-colonial era, solely relies on a system whereby transfer of land is done with the consent of the family head or on consultation with the head of the clan or the Chief. Ilori & Adebayo (n.d), however, stated that the "Customary Land Tenure system prescribes that any form of alienation without the proper consensus of the proper members of a family would be deemed void or voidable as in different instances. While the family property may be allotted to the members of the family, allottees cannot alienate or part with possession without appropriate consent as established in the case of Alao V. Ajani where the court held that a member of the family is not permitted to introduce a stranger into the family by the back door". The above implies that the family heads right to administer land is limited as he cannot act alone on matters relating to land without an agreement. However, transfer of land with the consent of principal family members is deemed valid. However, section 21 and 22 of the Land Use Act, strictly stated on the extent to which alienation of statutory and customary rights of occupancy can be done and in each case the approval of the Governor must be sought for consent on assignment, mortgage or sub-lease. Section 23 described fully the conditions of consent granted by the Governor under subleases applying the provisions of section 22 *mutatis mutandis*. Therefore, based on the above, the sub-lessor can only transfer land with the prior consent of the Governor. From the above, land transfer in Igbakwu requires compensation for transfer of private family land whereas clan land is transferred only to clan members with no compensation.

D. Rights of Occupancy: Land can be borrowed for farming purposes under the traditional land tenure system, the borrower might be expected to give a certain percentage of the produce of the farm as payment before the colonial era which is usually based on consensus with both parties. However, borrowing under customary land tenure might be put into permanent use, the Court is more likely to presume Customary Tenancy as seen in the case of Adebayo V. Ladipo (Ilori & Adebayo, N.d). Land can also be granted as a form of gift resulting to absolute transfer of titles to the beneficiary of the grant. The Land Use Act solely made strict provision for both statutory and customary rights of occupancy stating the age limit of which a right of occupancy can be granted. The Law also made strict provisions on the devolution of rights of occupancy at death and the power of the Governor to revoke rights of occupancy for overriding public interest and the compensation payable by the Governor in such cases. For traditional systems, land for public purposes might relate to market places for villagers, town squares, play grounds etc. such land are designated by the Chiefs through consultation with the 'IGWE' and the family heads. However, no compensation is paid as land forms part of a collective decision of the heads. The provisions of the Act on rights of occupancy includes an option to accept resettlement



in lieu of compensation during revocation of rights of occupancy especially in cases of developed land which has a residential building. Its provisions also include cases where the value of the alternative accommodation is higher than the compensation payable, the excess amount is treated as a loan which is repayed to the government.

E. Certificate of Occupancy: The Act in section 9 made strict provisions for a certificate to be issued for bearers of statutory and customary rights of occupancy as evidence which according to the Act is to be termed 'Certificate of Occupancy' to be paid for by the person whose name it is issued. The idea however is to serve as evidence to prove that the person whose name the certificate bears has in his stead such a land. This is not the case with the traditional system as there exists no education at all within the period of application but the trustee should be an elderly member of the family or family with proven record of honesty and as such have knowledge of his immediate environment as most of the agreement are gentlemanly and hence there is no record of such transaction. However, the Act made provisions to validate the rights of title holders before the Act as the rights to deemed valid depending on the status of the land.

Although there is no direct reference to the indigenous land tenure in the Act, the recognition and preservation of customary land law within the language of the Act may imply the survival of the indigenous land tenure (Ilori and Adebayo, 2018). The provisions of the Act however, was intended to create a system that works effectively for Nigeria. Same Act that empowered the establishment of the Land Use and Allocation Committee to help the Governor also handed power to the National Council of States by section 46 especially for transfer of rights for non-Nigerians and listed the grounds to which their power transits which is like removing some of the powers of the Governor who have been empowered with creating a committee to assist in land matters which to me is a conflicting situation.

METHODOLOGY

The study area, Igbakwu is a town in South Eastern, Nigeria located in Ayamelum Local Government Area of Anambra State and notable as the agricultural hub of the state especially the production of the local Anambra rice and other agricultural produce. For the study to be duly addressed, the researcher selected twenty (20) notable members of the community comprising of elders, five (5) from each of the villages. It is worthy to note that Igbakwu community is comprised of Four (4) major towns sharing boundaries with each other. The villages are namely; Isiachelle village, Isiokwe village, Irato Village, and Amagu village. Primary and secondary data were adopted while information was retrieved from the randomly selected five (5) elders from each of the villages, with the form adopted as a result of the limited time frame for the study.



FINDINGS

Land tenure studies in Nigeria depicts that of a centralized study with several scholars with many different opinions on their studies, objectives and conclusions. Traditional land tenure system's role in the society pre-colonial rule was known to have contributed immensely to the growth of a group of people, rich in culture and could form a centralized tenure system to tackle the issues of land and prevent dispute by selecting an elder and creating a system of trusteeship which was solely vested in him. Trust means absolute credence which was a kind of a unanimous decision by a clan which means that the person who assumes that position must be a highly respected member of the community. Therefore, it was noted that the Land Use Act, 1978 also adopted the vesting and trusteeship system which was actually practised pre-colonial rule but the onus here is in the level of vesting and trust as the earlier covers a minimal area which includes just the town, the villages and the clan, the Land Use Act however covers a state and a state in my own opinion pertains to a territory and is comprised of so many towns and villages within a territory and hence, includes a wider coverage area. The nationalization school of thought however is not absolute as the Governor is expected to exercise control and management on land. The Governor is also a political figure, voted in by the masses but for a certain number of years which entails that the person so vested was appointed by a collective decision of the masses, this might be distinguished sometimes by the person so appointed who might have rigged his way in, in which case it becomes another problem according to the rule of law.

Despite the attempt of the Land Use Act, 1978, at ensuring uniformity in Land transactions in Nigeria, several criticism has been received over the years with several calls to revise the provisions of the Act. The current demolitions happening in several locations in some states led people to question the rule of law and believing that the Land Use Act's control and power is adopted and exercised in the wrong way leading to several citizens losing their properties worth millions as a result of the absolute power and rights vesting. The results of the research generally indicate that major visible differences exist between both the traditional systems and the Land Use Act but due to non-enforcement of the rule of law, several areas and villages continue to practise the traditional systems in their area but with major twists due to modernization. As stated earlier, members of a clan are now required to pay for survey fee for mapping out of land in villages upon allocation of land. Any other form of payment is unaccepted, this however contradicts expectations as it is visible that the control and management of the local government is minimal except in cases of overriding public interest. The results also indicate major differences in the issue of certificate of occupancy as no certificate is issued in respect of land in the traditional land systems as no education system was in existence. Even currently several village land have no registered evidence as locals continue to practise the traditional land systems in such areas. It is worthy to note that locals refuse to adhere to the rule of law on boundaries in Ayamelum Local Government Area and the government is unable to enforce authority till date. This shows the level of practicality of the existing laws and a need to revise existing laws to favour the masses, with strict penalties on non-enforcement.



RECOMMENDATIONS

To maintain the rule of law, the Nigerian Government must recognise the growing importance to revise existing laws which relates to the need and aspiration of an increasingly growing population. The Land Use Act, 1978 was enacted over forty (40) years ago and the country has undergone several policy changes on several aspects of the society, it is expected for a change in some of its provisions to tackle the issue of land availability especially for the poor masses. To take on this challenge, the current administration should devise ways and select core professionals to advice on the impending issue in order to reach a consensus and prevent the Act from veering off its set objectives. The recent Land tussle as stated in the Punch newspaper of 29th May, 2024 was a perfect example of the need for a probable land tenure system.

CONCLUSION

The traditional land tenure systems and the Land Use Act, 1978 are both land tenure systems developed with unique intentions on land administration. Though one of the systems existed several years before the enactment of the later it is obvious that both has clear objectives, few similarities and differences as earlier discussed. This paper clearly analysed both tenure systems with the differences. It is however obvious that the practised indigenous traditional systems worked within that period because of the manner of practise it imbibed. This however calls for a need to revise the current law to carter for the increasing population and need of the people.

REFERENCES

- Abatan, S., Musibau, L., Bankole, O. & Babarinde, R. (2021). History of Nigeria Land Use Act (An Overview). International Journal of Engineering Applied Sciences and Technology. <https://www.Ijeast.com>.
- Afribary (2024). The Land Use Act of 1978 Appraisal, Problems and Prospects. <https://afribary.com/works/the-land-use-act-of-1978-appraisal-problems-and-prospects>.
- Allagoa, F.B. (n.d). The Concept of Family Land. <https://www.coursehero.com/file/71347589/THE-CONCEPT-OF-FAMILY-LAND>.
- Anyanwu, J.C., Oyeyusi, A., Oaikhenan, H., & Dimowo, F.A. (1997). The Structure of the Nigerian Economy. Onitsha. Joance Educational Publishing Ltd.
- Babalola, K.H & Hull, S.A (2018). Examining the Land Use Act of 1978 and its Effect on Tenure Security in Nigeria. A case study of Ekiti State, Nigeria.
- Famoriyo, S. (1973). Land Tenure, Land Use and Land Acquisition in Nigeria. Institute for agricultural research Ahmadu Bello University Zaria, Nigeria.
- Ilori, A. (2019). Customary Land Tenure System and The Land Use Act: A Comparative Analysis. IRLJ 1 (2). <https://www.Nigerianjournalonline.com>.
- Maduekwe, N.C (2014). The Land Tenure System under the Customary Law. A paper presented at the Nigerian Institute of Advanced Legal Studies Training Programme for Judges of the Customary Court and Area Courts held at the Shehu Yar'adua Centre, Abuja.
- Mixta (2021). Land Tenure System in Nigeria: Types & Advantages. <https://mixtafrica.com/Land-texture-system/#>.



- Nwocha, M.E. (2016). Impact of Nigerian Land Use Act on Economic Development in the Country. *Acta Univasitatis Danibius Administratio*, Vol 8 (2).
- Obioha, E.E. (2008). Change in Tenure Pattern and Customary Land Practices among Igbo Community in Southeastern Nigeria.
- Okafor, C.S. & Udobi, N.A. (2024). An Analysis of the Difference Between Traditional Land Tenure Systems and The Land Use Act, No 6 of 1978, Nigeria. *Journal of Advanced Research and Multidisciplinary Studies (JARMS)*. www.abjournals.com.
- Okolo, C.Y & Ogbuefi, J.U (2021). Traditional Land Tenure System in Nnewi, Anambra State, Nigeria. *International Journal of Science and management studies*. Vol. 4 (6). <https://www.ijmsjournal.org>.
- Okpala, C.A. & Udobi, A.N (2022). Comparative Analysis of Land Use Act using Traditional Method, Nimo, Anambra State. *International Journal of Advances in Engineering and Management (IJAEM)*. Vol.4 (3), pp 1218-1226. www.ijaem.net.
- Onifade, A. (2024). Land Tenure System in Nigeria-7 ways land is owned legally: Land Ownership and Documentation. <https://www.landlord.com.ng/land-tenure-system-in-nigeria>.
- Oshio, P.E. (n.d). The Indigenous Land Tenure and Nationalization of Land in Nigeria. <https://core.ac.uk/pdf>.
- Osita, I. (2014). An Analysis of Igbo Traditional Land Tenure System in Amawbia (Amobia), Awka South, Local Government Area of Anambra State.
- Otty, U.E., Nwosu, C.C. & Udobi, .A.N. (2021). Critique of Nigerian Land Use Act of 1978. <https://www.researchgate.net/publication/252327687>.
- Otubu, A. (2018). The Land Use and Land Administration in 21st Century Nigeria: Need for Reforms. <https://dx.doi.org/10.4314/jsdlp.v9i1.5>.
- Shobowale, L. (2023). Rethinking the land use act for improved outcome. <https://www.thecable.ng/rethinking-the-Land-Use-Act-for-improved-outcome>.
- The Goodnews Bible.
- The Land Use Act of 1978.
- The New York Times.
- The Punch Newspaper Online.
- Yahaya, Y. (2019). The Land Use Act and the Nigerian Housing Sector. Central Bank of Nigeria Economic and Financial Review.