

# The Human Face of Resource Conflict: Property and Power in Nigeria

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## I. INTRODUCTION

The fundamental purpose of property rights, and their fundamental accomplishment, is that they eliminate destructive competition for control of economic resources. Well-defined and well-protected property rights replace competition by violence with competition by peaceful means.<sup>1</sup>

Three years: 53,000 people dead, thousands of homes destroyed, tens of thousands of men, women, and children displaced.<sup>2</sup> These terrible statistics do not represent the toll taken in a traditional war between nations. Nor are they the result of a civil war. Rather, these grim figures represent the outcome of a particular kind of conflict that surfaces all too often in Africa and throughout the developing world: a bloody battle over the use and control of resources, a battle that ultimately is about property rights.

Between 2001 and 2004, the people of the central Nigerian state of Plateau suffered a series of deadly riots that led to the declaration of a state of emergency.<sup>3</sup> What caused these riots? A peace conference conducted by the Nigerian government blamed the violence on disputes over property—disputes that were, undoubtedly, exacerbated by ethnic and religious conflicts.<sup>4</sup> The scope of the killing is shocking and leads one to ask, “What has happened in Nigeria to drive people to settle land disputes by means of violence rather than peaceful judicial, administrative, or customary mechanisms?”

This paper considers possible answers to these difficult questions by focusing on two issues: the evolution of legal norms in response to both endogenous and exogenous changes, and the role that African customary law and indigenous dispute resolution has played in promoting coordination and cooperation among group members, thereby reducing violent conflict. This paper explores legislative actions taken by the Nigerian government that impede the continued evolution of these relatively elastic customary legal norms. Property norms under customary Nigerian

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1. Armen A. Alchian, *Property Rights*, in THE CONCISE ENCYCLOPEDIA OF ECON., <http://www.econlib.org/library/Enc/PropertyRights.html> (last visited Nov. 5, 2005).

2. *Nigeria: Plateau state violence claimed 53,000 lives—report*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Oct. 8, 2004, <http://www.irinnews.org/report.asp?ReportID=43580>.

3. The state of emergency is now over. For the text of the Declaration, see *Declaration of Emergency Rule in Plateau State of Nigeria by President Olusegun Obasanjo*, URHOBO HIST. SOC'Y, May 18, 2004, [http://www.waado.org/NigerDelta/FedGovt/Federalism/emergency\\_rule/plateau\\_obasanjo.html](http://www.waado.org/NigerDelta/FedGovt/Federalism/emergency_rule/plateau_obasanjo.html). For reporting on the event, see *Nigeria: Obasanjo declares state of emergency in Plateau State*, GLOBAL SECURITY, May 18, 2004, <http://www.globalsecurity.org/military/library/news/2004/05/mil-040518-irin02.htm>.

4. *Nigeria: Plateau state violence claimed 53,000 lives—report*, *supra* note 2.

law were flexible enough to provide a wide variety of property rights and allow for the peaceful trading and reasonable protection of these rights, all at relatively low cost. In addition, accessible indigenous dispute-resolution mechanisms provided access to leaders with substantial local knowledge of local property rights arrangements. This paper also examines Nigeria's customary land use rules for dealing with strangers, and considers how these provisions have reduced transactional costs and aligned expectations about property norms.

In 1978, a federal statute changed formal *de jure* rules governing property law, imposing a costlier, more formalized and centralized approach to land-use issues. This paper suggests that the new legislation, coupled with significant enforcement problems, may be responsible for some of the violence in Plateau State. Examining the ways in which the property-right environment has changed may provide insight into the sources of the violence plaguing the Nigerian highlands in Plateau State.<sup>5</sup>

#### *A. The Outline of the Crisis*

Consider Yelwa. On May 2, 2004, in this small town in Plateau State, a group of Christian Taroks carrying guns and machetes attacked and murdered over 600 Fulani Muslims.<sup>6</sup> The attack was meant to avenge a Fulani massacre of 50 Taroks that had taken place inside a church in February 2004. That massacre, in turn, was a reprisal for earlier attacks by Christians against Fulanis. The attacks devastated the town and the region. One reporter noted: "Churches and mosques were razed. Neighbor turned against neighbor. Reprisal attacks spread until finally, in mid-May, the government imposed emergency rule."<sup>7</sup> While ethnic and religious conflicts partially explain the vicious confrontations, at heart, this massacre seems to have centered around land. *New York Times* reporter Somini Sengupta wrote:

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5. The official motto of Plateau state is the "Home of Peace and Tourism." See Tom Thatcher & Rosie Thatcher, THATCHER'S WEBSITE, Oct. 30, 2001, [http://www.thachers.org/Oct%202001%20files/oct\\_2001.htm](http://www.thachers.org/Oct%202001%20files/oct_2001.htm) (this personal website, run by an American doctor and missionary in Nigeria, also shows photos of the aftermath of the Jos riots).

6. Press Release, Human Rights Watch, Nigeria: Prevent Further Bloodshed in Plateau State, (May 11, 2004), available at [http://www.hrw.org/english/docs/2004/05/11/nigeri8568\\_txt.htm](http://www.hrw.org/english/docs/2004/05/11/nigeri8568_txt.htm).

7. Somini Sengupta, *Letter from Africa: Where the Land Is a Tinderbox, the Killing Is a Frenzy*, N.Y. TIMES, June 16, 2004, at A4.

Before there were mass graves here, there was the matter of cows and corn patches. Some years ago . . . farmers accused cattle herders of deliberately sending their long-horned beasts to trample across their plots. Cattle herders accused farmers of deliberately setting their grassy meadows on fire to keep their animals from grazing.<sup>8</sup>

Other observers agree. Human Rights Watch characterized the massacre as “a prolonged conflict over land use as well as political and economic control.”<sup>9</sup> Discussing the conflict in Yelwa, Alex Vines of the Royal Institute of African Affairs argued that it was, at heart, a contest over land.<sup>10</sup> Sengupta observed: “In recent years, as the desert has spread, trees have been felled and the populations of both herders and farmers have soared, the competition for land has only intensified.”<sup>11</sup> Mark Doyle of the BBC echoed this insight:

While there is great wealth at the top of Nigerian society . . . there is also great poverty and some of the violence reflects a struggle for resources and survival. This is particularly the case in rural areas along a belt of territory across the centre of the country, including Plateau State, where farmers are in competition for land and resources with herders. In areas where farmers are predominantly settled Christians and where cattle herders, originally from further north, are mainly Muslim, an impression can be created of ‘religious’ or ‘ethnic’ tension. But in reality the root causes of the violence are political and economic—a competition for fertile land.<sup>12</sup>

If the inhabitants of Yelwa, and of Plateau State more generally, compete for a scarce resource—land—in an increasingly heterogeneous environment,<sup>13</sup> economic theory predicts that they would seek to create

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8. *Id.*

9. Nigeria: Prevent Further Bloodshed in Plateau State, *supra* note 6.

10. Sengupta, *supra* note 7.

11. *Id.* For a discussion of the relationship between property rights and migratory herding, see TOM BETHELL, THE NOBLEST TRIUMPH 239–42 (1998).

12. Mark Doyle, *Poverty behind Nigeria's violence*, BBC NEWS WORLD EDITION, May 19, 2004, available at <http://news.bbc.co.uk/2/hi/africa/3730109.stm> (last visited Nov. 5, 2005). The same sentiment is found in a report by EDC News:

“It is more of a matter of the natives fearing their land was being taken over and deciding to fight for it,” [a local expert] said. The Sahara Desert is steadily advancing southwards, forcing many farming and grazing communities in the Nigeria’s [sic] far-north to move south in search of greener pastures. Their arrival in central Nigeria has increased pressure on the land. Many indigenous communities in the Middle Belt have been afraid that they will lose out to the newcomers.

*See Conflict in northern Nigeria more about land and livelihoods than religion*, ENV’T & DEV. CHALLENGES NEWS, May 7, 2004, <http://www.edcnews.se/Cases/NigeriaYelwa2004.html> (last visited Nov. 5, 2005).

13. The population in northern Nigeria grew from approximately 16.8 million in 1952 (the date of the first reliable census taken by the British) to approximately 47.3 million in 1991 (the date of the last reliable census by the independent government). This growth represents an annual increase of 2.61% per annum, though in some regions, such as Plateau State and Niger State increases have been more substantial—3.5% in Plateau per annum and 3.12% in Niger. Sustained droughts in the far northeast of Nigeria are partially responsible for the increase of population in the more humid areas

and enforce more individualized land rights in order to internalize externalities caused by these changes. Individual land rights would allow them to allocate land more efficiently and to restrict entry to better capture the increasing value of land.<sup>14</sup> Unfortunately, the legislative solution to land-use and land-allocation issues in modern Nigeria—the Land Use Act of 1978<sup>15</sup>—creates a rigid legal environment that limits internalization efforts by prohibiting the sale of land, restricting permissible lot sizes, and requiring government permission to lend or lease property.<sup>16</sup> Such rigidity contrasts with the relatively elastic customary law in Plateau, which provided a rich array of mechanisms to manage changes in market value and technology, including the sale of land.<sup>17</sup>

Complicating this situation is the Nigerian government's inability, or unwillingness, to effectively mediate conflicts: "In the latest incident,

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of Plateau and Niger. Werner Fricke, *Factors Governing the Regional Population Development in NE-Nigeria*, in PERSISTENCE AND TRANSFORMATION BETWEEN CHAD BASIN AND BENUE (1999) (presented at the Symposium of the Sonder-forschungsbereich, May 29, 1999), available at [http://www.rzuser.uni-heidelberg.de/~bu1/sfb/d1/Session\\_fricke\\_www\\_symp99\\_2.html](http://www.rzuser.uni-heidelberg.de/~bu1/sfb/d1/Session_fricke_www_symp99_2.html). The Annual Abstract of Statistics of Nigeria lists the 1991 population of Plateau state at 3,312,412. The projected population for 1998 was 4,627,043. See FED. OFFICE OF STATISTICS, ANNUAL ABSTRACT OF STATISTICS (Nig.), tpls. 12–13 at 26–27 (1999).

14. In his seminal work, Harold Demsetz argues: "[P]roperty rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization. Increased internalization, in the main, results from changes in economic values . . . changes to which old property rights are poorly attuned." Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347, 350 (1967). He goes on to discuss the ways in which Montagnes Indians developed property rights in hunting grounds in response to increases in the value of fur-bearing animals. *Id.* at 351–53; see also Eirik G. Furubotn & Svetozar Pejovich, *Property Rights and Economic Theory: A Survey of Recent Literature*, 10 J. OF ECON. LITERATURE 1137, 1141 (1972); Terry L. Anderson & Peter J. Hill, *The Evolution of Property Rights*, in PROPERTY RIGHTS: COOPERATION, CONFLICT, AND LAW 118, 119 (Terry L. Anderson & Fred S. McChesney eds., 2003).

15. Land Use Act Decree No. 6 (1978) (Nigeria) [hereinafter Land Use Act]. Shortly before the Land Use Act was implemented in 1978, 34,656.1 hectares of land in the Benue/Plateau state were "purchased," which is defined as "bought for cash" by official Nigerian government documentation. In 1967 Benue and Plateau were merged, they have since been separated. See FED. OFFICE OF STATISTICS (AGRIC. SURVEY UNIT), RURAL ECONOMIC SURVEY (Nig.), tpls. 2.1–2.3 (1980). In 1977/78 this number had, for Plateau alone, fallen to 7,602 and in 1978/79 the number was 243 or 0.12 percent of the land in Plateau state. The Land Use Act prohibits such sales.

16. See Land Use Act, *supra* note 15.

17. Discussing the customary land law of Papua New Guinea, Robert Cooter writes: "[M]y general view (is) that customary law is living law, which changes and develops according to the wishes of the people who are subject to it." ROBERT COOTER, ISSUES IN CUSTOMARY LAND LAW 4 (1989). The customary land law of Nigeria changed as well, responding to differing needs and constraints. See discussion *infra* pp. 36–45.

police and army reinforcements were only sent to Yelwa after hundreds of people had already been killed.”<sup>18</sup> President Obasanjo, in his May 18, 2004 Declaration stated:

As at [sic] today, there is nothing on [the]ground and no evidence whatsoever to show that the State Governor has the interest, desire, commitment, credibility and capacity to promote reconciliation, rehabilitation, forgiveness, peace, harmony and stability. If anything, some of his utterances, his lackadaisical attitude and seeming uneven-handedness over the salient and contending issues present him as not just part of the problem, but also as an instigator and a threat to peace. Plateau State cannot and must not experience another spate of violence, killings and destruction of property. If allowed, the crisis will engulf the entire nation.<sup>19</sup>

When resources are highly valued and competitors for these resources are numerous and heterogeneous, formal governance structures are normally needed both to define and enforce competitors’ rights.<sup>20</sup> However, formal governance structures designed to manage property disputes in Nigeria’s highlands are corrupt, costly and/or non-existent.<sup>21</sup>

This corruption and costliness traps the people of Plateau State between the proverbial rock and hard place. Rising land values in Plateau due to increased demand should lead to a gradual movement away from the traditional communal property regime towards greater individualization of tenure.<sup>22</sup> However, the Land Use Act blocks this evolutionary move by prohibiting land sales and by encumbering other

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18. Nigeria: Prevent Further Bloodshed in Plateau State, *supra* note 6. There is evidence that government officials knew in March that reprisals on the citizens of Yelwa were planned in response to the February killings. Despite assurances that the government would “deal decisively” with any plotters, little was actually done to prevent the bloodshed. See *Nigeria: 2,500 displaced in Plateau State violence, says Red Cross*, U.N. INTEGRATED REGIONAL INFO. NETWORKS, Mar. 4, 2004, <http://www.reliefweb.int/w/rwb.nsf/0/60dd46cd396516f285256e4d0076eb95?>

19. *Declaration of Emergency Rule in Plateau State of Nigeria by President Olusegun Obasanjo*, *supra* note 3.

20. Gary D. Libecap, *Contracting for Property Rights*, in PROPERTY RIGHTS: COOPERATION, CONFLICT, AND LAW 142, 145 (Terry L. Anderson & Fred S. McChesney eds., 2003) (noting that in such a situation, “the power of the state usually is necessary to supplement informal constraints on access and use”; in Nigeria, the state fails to provide such supplemental support).

21. Cf. Bolaji Abdullahi, *Country Reports: Nigeria*, in GLOBAL CORRUPTION REPORT 2004 224 (Robin Hodess et al. eds., 2004), available at [http://www.globalcorruptionreport.org/download/gcr2004/11\\_Country\\_reports\\_L\\_Z.pdf](http://www.globalcorruptionreport.org/download/gcr2004/11_Country_reports_L_Z.pdf). In 2004, Nigeria placed next to last in a score of perception of corruption within the state. *Id.*

22. Demsetz, *supra* note 14, at 350. In situations where property values increase, competition for control of the resource often increases. For discussions of increased conflict over land as a result of increases in value see generally LEE J. ALSTON, GARY D. LIBECAP & BERNARDO MUELLER, TITLES, CONFLICT AND LAND USE (1999) (discussing episodes of violence in the Brazilian rain forest in response to increasing demand for land); see also Gershon Feder & David Feeny, *Land Tenure and Property Rights: Theory and Implications for Development Policy*, 5(1) THE WORLD BANK ECON. REV. 135, 138–39 (1991) (discussing the conflict levels in Thailand in the late 19th century in response to rising land value).

permitted transfers with significant bureaucratic obstacles.<sup>23</sup> This new, legislatively imposed system of land allocation replaces evolved indigenous dispute resolutions mechanisms with a costlier, bureaucratized dispute-resolution system that is widely perceived as corrupt.<sup>24</sup> Finally, as President Obasanjo claims, the process for enforcing these new property rights often simply fails to function. As the federal government imposes an ill-fitting legislative solution on land-tenure issues that the state government fails to enforce, the people of Plateau may be left to take “justice” into their own hands, resulting in anarchy.<sup>25</sup>

Unfortunately, the Yelwa massacre was not an isolated incident. Major riots occurred in the northern Plateau city of Jos in 2001.<sup>26</sup> In 2002, Fulanis attacked the Tarok people in Wase in southern Plateau; in March 2003, the Fulanis attacked another Tarok settlement, resulting in over 80 deaths; and in June 2003, over 500 people were killed.<sup>27</sup> Reprisals also followed the Yelwa massacre.<sup>28</sup> The Jos riots, while attributed to

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23. Changes in the value of land in Plateau state, and the desire of individuals to capture this increased value, may be leading people to band together to better block entry by non-group members. If there is strength in numbers, dissatisfaction with the current land system in Plateau state may be causing people to group together to fight off threats to their property claims. This destructive collective action may represent a response to an unproductive *de jure* system and an attempt to adjust the *de facto* property rights in the absence of effective government action. See GARY D. LIBECAP, CONTRACTING FOR PROPERTY RIGHTS 16 (1989) [hereinafter CONTRACTING FOR PROPERTY RIGHTS].

[Stating that] an increase in relative prices or a fall in production costs will raise the stream of rents attainable from ownership and encourage new competition for control. Old enforcement mechanisms may no longer be adequate, leading to rent dissipation as inputs are diverted from production to protect against trespass and theft . . . capturing a portion of any rents that can be saved by more precisely defining property rights motivates individuals to organize for collective action to adjust property institutions from their current state to the new conditions.

*Id.*

24. See discussion *infra* pp. 47–52.

25. For an economic analysis of the decision-making process involved in determining when to negotiate property rights claims and when to fight over conflicting claims, see generally Terry L. Anderson & Fred S. McChesney, *Raid or Trade? An Economic Model of Indian-White Relations*, 37 J.L. & ECON. 39–74 (1994).

26. See HUMAN RIGHTS WATCH, JOS: A CITY TORN APART (BACKGROUND) (2001), available at <http://www.hrw.org/reports/2001/nigeria/>; see also *20 dead in fresh Plateau violence despite state of emergency*, GLOBAL SECURITY, May 20, 2004, <http://www.globalsecurity.org/military/library/news/2004/05/mil-040520-irin02.htm>.

27. *Plateau State: Communal Conflicts in Wase (Southern Plateau) and Berom area (Northern Plateau)*, INST. FOR DEMOCRACY IN S. AFR., Mar. 1, 2003, <http://www.idasa.org.za> (follow Programmes, Peacebuilding, Reports, Weekly Update March 2003 link).

28. See *20 dead in fresh Plateau violence despite state of emergency*, *supra* note 26.

discontent over a political appointment, were likely exacerbated by uncertain property rights, which made it difficult to effectively absorb large numbers of internally displaced Nigerians. Human Rights Watch notes:

[M]any people fleeing conflicts in their own areas had sought protection and safety in Jos; some had even settled there. Some observers believe that this regular influx of populations from neighboring states may have ended up destabilizing the tranquility of Jos. People fleeing in 2000 and 2001 from clashes in Kaduna, Bauchi, Taraba, and Nasarawa states may have inadvertently contributed to creating an atmosphere of fear among inhabitants of Plateau State by testifying to the atrocities they had left behind, some of which were still continuing. The increase in the population in Jos, in particular, also created an increase in economic pressures, leading in turn to the scarcity of some goods and increase in prices. Resources became stretched, and tensions began to rise.<sup>29</sup>

Since 1999, a number of other northern and middle belt states in Nigeria have experienced repeated episodes of violence.<sup>30</sup> Violence escalated following the election of the civilian government of Olusegun Obasanjo in 1999, and particularly after the reintroduction of *sharia* law in criminal cases in 12 northern Nigeria states in 2000.<sup>31</sup> In the intervening years, thousands were killed, leading President Obasanjo to declare a state of emergency in Plateau State in 2004.<sup>32</sup>

These conflicts are typically characterized as struggles between ethnic and religious factions.<sup>33</sup> Nigeria is extraordinarily diverse, composed of

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29. See JOS: A CITY TORN APART, *supra* note 26.

30. See *Nigeria: 2,500 displaced in Plateau State violence, says Red Cross*, *supra* note 18. The 1980s and 1990s have been described as particularly repressive in Nigeria. See Abdul-Ganiyu Garba & P. Kassey Garba, *Open Conflicts when State, Institution and Market fail: The case of Nigeria* 38 (June 5, 2002) (unpublished manuscript, on file with the Department of Economics, Ahmadu Bello University, Zaria, Nigeria) (the recent rise in the incidence of violence may be tied to the election of a civilian leader. Under a military dictatorship, discord and attendant violence might be more effectively suppressed, whereas under civilian rule it might prove more difficult to suppress discord and violent conflict. Nigeria elected President Obasanjo in 1999. The country was ruled by military dictators from 1983 to 1999).

31. *Sharia*, or Islamic criminal law, was introduced in the northern state of Zamfara in January, 2000. *Sharia* had been outlawed after Nigeria's independence in 1960. Since its reintroduction in 2000, 12 states have adopted *sharia*. See John Paden, *Islam and Democratic Federalism in Nigeria*, 8 AFR. NOTES 1, 1-2 (2002). In Nigeria, *sharia* is applied is applied to Muslims only in both civil and criminal cases. However, actions of vigilante groups, who "watch" for *sharia* violations, have resulted in non-Muslims feeling increasingly intimidated and, in some cases, in attacks against non-Muslims. See *Nigeria's Sharia Split*, BBC NEWS WORLD EDITION, Oct. 15, 2001, <http://news.bbc.co.uk/1/hi/world/africa/1600804.stm>.

32. David Cowan (ed.) *Nigeria Country Report*, THE ECONOMIST INTELLIGENCE UNIT 1 (Aug., 2004), available at <http://www.eiu.com> (subscription service required).

33. See Gilbert Da Costa, *Resurgence in ethnic violence kills hundreds in Nigeria*, PORTSMOUTH HERALD, Aug. 23, 1999, available at [http://www.seacoastonline.com/1999news/8\\_23\\_w2.htm](http://www.seacoastonline.com/1999news/8_23_w2.htm).



over 250 ethnic groups.<sup>34</sup> Plateau State alone has 54 different ethnic groups.<sup>35</sup> Some of these groups experience conflicts related to political rivalries, religious differences and access to resources. The Yelwa massacre is an example of the latter type of conflict.<sup>36</sup>

The country is divided not only along ethnic lines, but also along religious lines. Approximately 50% of the population is Muslim, 40% Christian, and 10% adhere to indigenous animist beliefs.<sup>37</sup> Of the 36 states in the Nigerian federation, the 19 northern states are predominately Muslim, while the 17 southern states are predominately Christian.<sup>38</sup>

The heterogeneity of Nigerian society makes for a potentially explosive mix. Since its independence from British colonial rule in 1960, political power in Nigeria has shifted back and forth between representatives of different ethnic, regional, and religious groups, as these groups have attempted to stem regional rivalries and distribute the benefits that flow from political leadership.<sup>39</sup>

34. See CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, available at <http://www.cia.gov/cia/publications/factbook/geos/ni.html> [hereinafter FACTBOOK].

35. See Funmi Peter Omale, *Implementation C'ttee for Peace Confab Inaugurated*, THIS DAY (Lagos), Oct. 8, 2004, available at <http://www.thisdayonline.com/archive.php> (click link to 2004, then October).

36. NIGERIA: *Muslim death toll in raid on Yelwa tops 600—Red Cross*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS, May 7, 2004, [http://www.irinnews.org/report.asp?ReportID=40952&SelectRegion=West\\_Africa&SelectCountry=Nigeria](http://www.irinnews.org/report.asp?ReportID=40952&SelectRegion=West_Africa&SelectCountry=Nigeria).

37. FACTBOOK, *supra* note 34.

38. See Paden, *supra* note 31, at 1.

39. At the time of independence in 1960, Nigeria was divided into three regions: the North, dominated by Hausa & Fulani ethnic groups, the West, dominated by Yorubas, and the East, dominated by Igbos. See TOYIN FALOLA, *THE HISTORY OF NIGERIA* 10–11 (1999). Over the past 44 years, Nigeria has been led by a northerner, Abubakar Tafawa Balewa, who was killed in a coup led by southeastern Igbos, who in turn were overthrown in a counter-coup led by Yakubu Gowon, a northerner from Middle Belt, which precipitated the three-year long Biafran civil war. The Gowon government broke the three regions of Nigeria into 12 to dampen regional tensions. This government lasted until 1975 when it was overthrown by Murtala Muhammed another northerner who, along with Olusegun Obasanjo, a Yoruba Christian, ruled until Muhammed was assassinated and Obasanjo took over. Obasanjo, a military officer, voluntarily turned power over to a northerner, Alhaji Shehu Shagari in 1979. In 1983, a military coup displaced Shagari with Muhammad Buhari, which was overthrown in 1985 by General Ibrahim Babaginda and Suni Abacha. Babaginda ruled until 1993, when elections were held. Chief M.K.O. Abiola a Yoruba from the south won these elections, which were annulled by Babaginda, who then transferred power to an short-lived interim government, which was replaced by rule by Abacha. Abacha died in 1998. Obasanjo was elected in 1999. On the problems associated with power sharing and the marginalization of ethnic groups in Nigeria, see Tunde Babawale, *The Rise of Ethnic Militias, De-legitimation of the State, and the Threat to Nigerian Federalism*, 3(1) W. AFR. REV. (2001), available at <http://westafricareview.com/vol3.1/babawale.html>.

Despite efforts to dampen regional and ethnic tensions, the mix of ethnicities and religions has occasionally exploded into violence, most seriously during the Biafran civil war in the late 1960s. To this day, conflict remains a significant problem, because certain groups in Nigeria fear domination by others and often perceive those in charge as corrupt.<sup>40</sup> Discontent has led to repeated demands for a change in leadership—or, often, to violent coups—to replace leaders perceived as illegitimate or biased with others considered more trustworthy. However, while increasing ethnic and religious polarization among Nigerians drives much of the nation’s violence, the underlying issues that spark this violence are often property and land-tenure disputes.

This paper attempts to identify a possible connection between the current Nigerian property-rights regime and riots that have left thousands dead. The focus is on Plateau State for a number of reasons. First, Plateau is unique among the northern Nigerian states in that the Islamic Sokoto Caliphate’s hold on the region was fairly tenuous.<sup>41</sup> Indigenous customary norms may have lasted longer in Plateau than in many other regions of northern Nigeria. These norms continued to develop and modify throughout the 19th century, rather than being replaced by “foreign” Maliki rules and customs.<sup>42</sup> Even under British rule, significant deference was shown to customary norms and traditions in Plateau State. The British “hands off” policy of indirect rule meant that indigenous norms regarding land tenure and dispute resolution were largely protected and enforced by the colonial-era Native Court system.<sup>43</sup> Finally, the international media outlet recognizes that some of the violence in Plateau is tied to disputes over access to and control over land.<sup>44</sup> For these reasons, Plateau presents a unique opportunity to investigate the effects of centralized government action (nationalization legislation)—coupled with corruption and increasing heterogeneity—on the spontaneous evolution of customary land tenure and property-rights norms.

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40. See KARL MAIER, *THIS HOUSE HAS FALLEN: MIDNIGHT IN NIGERIA* 11–19 (2000).

41. British colonial official Lord Hailey states that the Fulani system of rule did not, however, extend throughout Northern Nigeria; on the Bauchi plateau and south of the Benue River there were large areas where ‘pagan’ tribes had never fully acquiesced in it. Though it would have been convenient to treat those areas as falling within the Fulani system, this was not thought to be justified. LORD HAILEY, *AN AFRICAN SURVEY: REVISED 1956* 454 (1957).

42. See ROBERT MCC. NETTING, *HILL FARMERS OF NIGERIA* 46–47 (1968).

43. See *id.* at 48–51.

44. See discussion *supra* pp. 2–4.

## II. THE PROPERTY ENVIRONMENT: PROPERTY IN LAND AND LAND TENURE IN NIGERIA

Before 1978, three primary sources of property law existed in Nigeria: customary law, English common and statutory law, and post-colonial legislation. Since 1978, land law in Nigeria has been based exclusively on the Land Use Act of 1978,<sup>45</sup> a federal statute incorporated into the Nigerian Constitution.

### A. Customary Land Law

Traditionally, Nigerians believed that property in land in Nigeria belonged to God, but was held communally in a community-based tenure system.<sup>46</sup> Under this system, the first person to clear and use unclaimed land established possession and use rights.<sup>47</sup> This first possessor would allocate land to heads of families based on need.<sup>48</sup> Over time, the first possessor's role was taken on by a headman or traditional chief, who would allocate property to family heads. These family heads would then allocate land for use by their family members.<sup>49</sup>

Among the duties of the chief were to manage community land reserves, maintain group customs concerning land use, ensure that the

45. Land Use Act, *supra* note 15.

46. See N.O. Adedipe, J.E. Olawoye, E.S. Olarinde & A.Y. Okediran, *Rural communal tenure regimes and private landownership in western Nigeria*, FOOD AND AGRIC. ORG. OF THE U.N., LAND REFORM BULL. 1997/2, available at <http://www.fao.org/sd/LTdirect/LR972/w6728t13.htm> (follow "Land Reform Bulletin" and scroll down to find source); E. Wayne Nafziger, *Economy: Land Use, Soils, and Land Tenure, in NIGERIA: A COUNTRY STUDY* 155, 176 (Helen Chapin Metz ed., 1992), available at <http://hdl.loc.gov/loc.gdc/cntrystd.ng> (follow "Land Use, Soils, and Land Tenure" hyperlink). Note, however, that in an older treatise on African customary law, ICJ Justice T. Olawale Elias argues that it is incorrect to conceive of the African land tenure system as communal. Rather, it is more appropriate, he argues, to consider it as corporate. T. OLAWALE ELIAS, *THE NATURE OF AFRICAN CUSTOMARY LAW* 164 (1956).

47. See Adedipe et al., *supra* note 46.

48. These rights may be perpetual or for a period of time. See Emea Arua & Eugene Okorji, *Multidimensional analysis of land tenure systems in eastern Nigeria*, FOOD AND AGRIC. ORG. OF THE U.N., LAND REFORM BULL. 1997/2, available at <http://www.fao.org/sd/LTdirect/LR972/w6728t14.htm>. Also, rights for the temporary use of land could be granted to other groups. An example would be granting the right to herders to allow their animals to graze the stubble in a field that has been harvested. See Hubert Ouedraogo & Camilla Toulmin, *Tenure Rights and Sustainable Development in Western Africa: A Regional Overview 2* (paper presented at DFID Workshop on Land Tenure, Poverty, and Sustainable Development in sub-Saharan Africa, Feb. 16–19, 1999), available at [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/Africa\\_est.htm](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/Africa_est.htm).

49. Ouedraogo & Toulmin, *supra* note 48, at 4.

rights of the group were not diminished, and see that the rights of group members (and, when appropriate, the rights of strangers) were respected. The chief held residuary, reversionary rights to the property as a trustee on behalf of the group and never as an absolute owner.<sup>50</sup> These duties provided the chief with income (often in the form of in-kind payments of agricultural products and/or with cash payments for serving as an arbiter of disputes) and significant social status, as well as political control over the group.<sup>51</sup>

The chief, usually along with appropriate elders, bore primary responsibility for managing the indigenous dispute resolution process concerning land-use rights.<sup>52</sup> In some groups, permanent tribunals existed with identifiable judicial officers, whose job it was to bring offenders before the tribunal and thereby help preserve social order.<sup>53</sup> Land disputes were an important part of the case work of such tribunals. Cases involving land might address boundary disputes, disputes over the length of time one party was permitted to borrow or lease land, or the right of a party to occupy land in perpetuity if it seemed the land had been gifted away.<sup>54</sup>

When a dispute among members of the same family lineage arose, the aggrieved party would call for a meeting of the family or village headman and his advisors to resolve the issue.<sup>55</sup> The headman and/or elders would request that the aggrieved party state his or her case. The accused would also be asked to state what he or she knew about the dispute. This oral evidence relied on the memories of disputants, family members, and witnesses to transactions. The headman, along with the elders, would cross-examine witnesses and then consult among themselves in order to reach at a decision.<sup>56</sup>

These norms created a kind of informal property registry, or recording office. Reliance on memories required disputants and adjudicators to draw

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50. ELIAS, *supra* note 46, at 164.

51. On the issue of payments of chiefs for land-related duties *see* GAZETTEERS OF THE PLATEAU PROVINCE, NIGERIA (comp. by C.G. Ames, Jos Native Admin. 1934), *reprinted in* 4 GAZETTEERS OF THE NORTHERN PROVINCES OF NIGERIA 174 (Frank Cass & Co. Ltd. 1972) [hereinafter GAZETTEER].

52. For an interesting discussion of dispute resolution among the Tiv, an ethnic group located near, but not in, Plateau state *see* PAUL BOHANNAN, JUSTICE AND JUDGMENT AMONG THE TIV 30–31 (1968). While chiefs and elders often met in a kind of judicial session, disputes might also be taken directly to a chief for resolution. For a description of the way in which a civil case was conducted, *see* ELIAS, *supra* note 46, at 238–43.

53. ELIAS, *supra* note 46, at 218–19.

54. *See* BOHANNAN, *supra* note 52, at 60–61; GAZETTEER, *supra* note 51, at 114.

55. *See* ELIAS, *supra* note 46, at 217–22. Elias notes that disputes over land were considered “great” subject matter and so would often be resolved in the chief’s court, under more formal rules of procedure.

56. *See* BOHANNAN, *supra* note 52, at 28–69.

heavily from the bank of dispersed local knowledge.<sup>57</sup> This process, which required people to proclaim openly, or “publish,” what they knew, and to swear to the truthfulness of their statements, was one possible way to reduce information asymmetries, thereby reducing transactional costs.<sup>58</sup> Relatively transparent communications of this sort would also decrease levels of uncertainty within a community. On the other hand, there were clear drawbacks to reliance on memory. However, despite the drawbacks, in an isolated area with a small and compact population, such an approach may have been cost effective when compared with the more formal, and costly, specification of rights.<sup>59</sup>

When disputes *between* families or villages arose, the headman or sub-chief would approach a headman or sub-chief of a third group. This third party would attempt to resolve the dispute, provided both parties to the dispute agreed.<sup>60</sup> Refusal to submit to third-party adjudication would be reported to the tribe’s main chief.<sup>61</sup> If the case warranted, the head chief would be called on to hear and resolve the dispute. In cases of disputes between tribes, emissaries would be sent by the aggrieved tribe to the tribe allegedly causing the harm, asking for redress. In some cases, appeal was made directly to a third tribe to act as mediator.<sup>62</sup>

Even in less hierarchical societies, those in which political power was dispersed, civil disputes were handled in a similar manner: an elder would hear a dispute and appeal to a more influential elder. If a case were especially important, it would be taken to an *ad hoc* council of elders of the family lines in the local community.<sup>63</sup> A variety of other methods for initiating the resolution phase existed.<sup>64</sup> Paul Bohannon

57. See generally F.A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519, 519–30 (1945).

58. Note that such publication becomes costly in high-risk environments where officials, or others, can seize resources with relative impunity. See Benito Arruñada, *Property Enforcement as Organized Consent*, 19 J. L. & ECON. & ORG. 401, 410–13 (2003); see also Feder & Feeny, *supra* note 22, at 140.

59. YORAM BARZEL, *ECONOMIC ANALYSIS OF PROPERTY RIGHTS* 2–4 (1989).

60. See ELIAS, *supra* note 46, at 217.

61. *Id.*

62. *Id.* at 218.

63. *Id.* at 220.

64. These included announcing a dispute by beating drum throughout a village, which works to call elders together, the party seeking redress might go to a group of spiritual elders, whose jurisdiction might be broader than that of village elders, a spear might be placed before an accused party’s home, signifying the need for speedy resolution of the claim. In cases where the offender was unknown, a “diviner” would be used to

notes that land disputes were quite common, though he does not comment on the frequency with which they led to violence.<sup>65</sup>

Family members enjoyed the right to possess and to use land located in the family's territory. In other words, land was jointly owned on a kinship basis.<sup>66</sup> Under the customary tenure system, women were normally not allowed to own or inherit property, though their husbands typically "gave" them some land to work each year.<sup>67</sup> Traditionally, women had usufructory rights over certain land as long as they lived with their husband's family.<sup>68</sup>

An individual was required to use land to benefit the family or community group.<sup>69</sup> So long as an individual made beneficial use of land, he could keep the property, pass it on to his heirs, and even pledge its use in satisfaction of a debt.<sup>70</sup> Individuals as well as families had rights to exclude both strangers and, in certain situations, family members. However, non-family members (strangers) could, if given permission by the headman or chief, use land in the territory of the community of which he is a member—a point that will be addressed below.<sup>71</sup> Further, groups and individuals were allowed to lend land. Indeed, so long as land was available, the group or individual holding the unused land

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help identify the culprit—though this variety of detective work was rarely used in private, civil suits. *Id.* at 220–21.

65. BOHANNAN, *supra* note 52, at 31. However, there is some evidence that land disputes in Plateau during the colonial era were somewhat uncommon. GAZETTEER, *supra* note 51, at 114 (stating that, "Disputes about the ownership of land are rare and, when they do occur, they invariably arise out of a lease or loan."). Additionally, news reports claim that Muslims and Christians in these areas "had coexisted peacefully in these rural communities for decades, but that all changed in 2001 when a complex mixture of religious issues, disputes over land tenure and politics led to a spat of tit-for-tat killings and communal attacks." See Nigeria, 2,500 displaced in Plateau State violence, says Red Cross, *supra* note 18.

66. Adedipe et al., *supra* note 46.

67. NETTING, *supra* note 42, at 167.

68. Arua & Okorji, *supra* note 48.

69. Cooter discusses one of the key roles played by a communal property system: "Customary land law creates an incentive structure for cooperation and coordination among kin in the production and distribution of goods. The incentive structure includes a network of mutual obligations, which restricts everyone's freedom. In such a network there can be no unitary, absolute ownership." COOTER, *supra* note 17, at 15.

70. See Nafziger, *supra* note 46. Individuals could leave land unused for periods of time and still exert claims over land. The period of non-use could not be "unreasonable" however, or the individual would forfeit his rights. See ELIAS, *supra* note 46, at 163.

71. Toyin Falola, *Nigeria's indigenous economy*, in NIGERIAN HISTORY AND CULTURE 97, 98 (Richard Olaniyan, ed., 1985); see also A.S. Bamire & Y.L. Fabiyi, *Economic implications of property rights on smallholder use of fertilizer in southwest Nigeria*, in LAND REFORM, available at <http://www.fao.org/DOCREP/005/Y2519T/y2519t08.htm>.

could not refuse to lend to one who asked, though increasing scarcity placed strains on the lending system.<sup>72</sup>

Generally, individuals were not able to sell or mortgage property.<sup>73</sup> However, pledging land and never redeeming it created a near equivalent of sale.<sup>74</sup> Furthermore, there is evidence that in areas where significant labor was expended developing land for farming, a system approaching individualized tenure existed.<sup>75</sup>

Individuals were unable to acquire property by adverse possession.<sup>76</sup> However, individuals had full rights of ownership in physical structures they added to real property, as well as to any plants and trees they added.<sup>77</sup> Apparently, the customary idea of rights to land did not include the items found on the land that someone else placed there. This means that one family could have use rights to the soil, and another family who had planted nut trees on the land, could have rights to protect, maintain, and use the nuts. Under customary norms, the legal idea of land was limited to the soil. Finally, it was only the family or the community, acting under the direction of family and/or community leaders, that could dispose of property.

Towns and villages could also hold land. These lands typically included grazing and hunting lands, market sites, and such areas as sacred groves.<sup>78</sup> Today, corporate bodies known as corporate aggregates still hold land under communal tenure.<sup>79</sup> Some lands were "attached" to particular offices, or positions: *obas* in the south and *emirs* in the north. Legal rights in these lands were absolute. Over time, the role of the *obas* and *emirs* with regards to land diminished, and these traditional leaders lost some of their prestige and power.<sup>80</sup>

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72. Quedraogo & Toulmin, *supra* note 48, at 4.

73. Falola, *supra* note 71, at 98.

74. NETTING, *supra* note 42, at 166.

75. Netting states, "The multiplicity of arrangements for sharing, renting, and loaning land insures that an existing land base can be periodically redistributed according to need while preserving the principle fundamental to Kofyar intensive agriculture, that land is an individual possession." *Id.* at 167-68.

76. ELIAS, *supra* note 46, at 163.

77. *Id.* at 166.

78. Adedipe et al. *supra* note 46.

79. Arua & Okorji, *supra* note 48. Corporate aggregates include rural towns, villages, patrilineal and matrilineal groups, as well as extended and nuclear families.

80. *Id.*

Much land in Nigeria is still held based on customary rights. However, both the population and the demand for land have increased.<sup>81</sup> As a result, land available for use and development is becoming scarcer. Studies from the mid-20th century report limited availability of land in some areas and the sale of land in certain districts.<sup>82</sup> After Nigerian independence in 1960, land sales continued, furthering a move away from communal ownership and towards increased private ownership.<sup>83</sup> In order to sell land under customary law, the family member wishing to sell must receive the consent of all principal members of the family. Consideration must be paid for the transaction to be valid, and the seller must provide evidence of the “handing over” of possession in the presence of witnesses.<sup>84</sup> The partition of family or communal land is a signal that customary tenure rights are ending. However, in some areas, purchase of land remains difficult.<sup>85</sup>

The ability of families and communities to hold land based on customary rights was modified by the 1978 Land Use Decree, which vested ownership of all land in the government “to be held in trust and administered for the use and common benefit of all Nigerians.”<sup>86</sup> The Act creates a land-tenure system in which the sovereign holds ultimate title to the land, but allows for the long-term leasing of property.<sup>87</sup> Land-administration functions were taken from chiefs, family heads, and local communities and transferred to administrative agencies. Issues involving the sale, lease or inheritance of land were to be managed by these agencies, which operate under the office of the state governors.<sup>88</sup>

Previous forms of title have been replaced by “certificates of occupancy,” which are issued by either state officials (in the case of urban land) or

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81. See Fricke, *supra* note 13.

82. NETTING, *supra* note 42, at 100; see GAZETTEER, *supra* note 51, at 166 (reporting sales of land among the Angas tribe of Plateau).

83. Chimah Ezeomah, Land Tenure Constraints Associated with Some Recent Experiments to Bring Formal Education to Nomadic Fulani in Nigeria (Pastoral Dev. Network, Overseas Dev. Inst., Network Paper, 1985), available at <http://www.odi.org.uk/pdn/papers/20d.pdf>; see also Bamire & Fabiyi, *supra* note 71, at 3 (who note that increased reliance on cash crops such as cocoa, oil palm, cola nut and coffee, in conjunction with technologies that increase agricultural production, making agricultural land more valuable are also leading to increased individual ownership).

84. Adedipe et al., *supra* note 46.

85. Arua & Okorji, *supra* note 48.

86. Land Use Act, *supra* note 15, § 1.

87. As a part of its controversial land-reform efforts, the government of Zimbabwe has also taken title to land and issues 99-year leases to potential users. See *Zimbabwe: govt moves to nationalize all productive land*, U.N. INTEGRATED REGIONAL INFORMATION NETWORKS, June 8, 2004, <http://www.irinnews.org/report.asp?ReportID=41476>.

88. Donald C. Williams, *Measuring the Impact of Land Reform Policy in Nigeria*, 30 J. OF MODERN AFR. STUD. 587, 588–89 (1992).



local government officials (in the case of most rural land).<sup>89</sup> These officials have the power to revoke customary rights if land is needed for a public purpose.

In addition to this change in the legal environment, exogenous factors are causing changes in the customary tenure system. As noted above, population increases, migrations resulting from the increased desertification of northern Nigeria, and increasing urbanization, all increase the strain on land use in northern and middle belt Nigeria.<sup>90</sup> These pressures may lead to a desire among inhabitants for increased individualization of tenure and away from the restrictive Land Use Act regime and the traditional communal property tenure system.<sup>91</sup>

### *B. Property Norms in Northern Nigeria*

Until the early 19th century, northern Nigeria was largely controlled by the Hausas, the main ethnic group in northern Nigeria. The Hausas maintained a customary land-tenure system until the first decade of the 19th century. During the very early 19th century, Muslim Fulanis, led by Usman dan Fodio, extended their control over a significant portion of northern Nigeria, creating the Sokoto Caliphate.<sup>92</sup> As their control expanded, they instituted changes in land-tenure rules. The new Fulani rulers took control of Hausa lands and vested ownership rights over these lands in the Sultan of Sokoto.<sup>93</sup> Land held by the Sultan was divided into reserve lands, considered “state” property to be used by the Sultanate; cultivated lands, for which *imams* determined use allocations; unused lands, also under the control of *imams*; and finally, *waqf* lands, to be used for the benefit of the entire community.<sup>94</sup> This system provided extensive control over land to *imams*, who would grant use rights and, at times, assign unused land without reference to the needs of the local community.<sup>95</sup>

However, while Plateau State is part of northern Nigeria, it was subject

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89. Ouedraogo & Toulmin, *supra* note 48, at 16.

90. Sengupta, *supra* note 7.

91. Ouedraogo & Toulmin, *supra* note 48, at 5–6. Lord Hailey recognized similar pressures in Nigeria in the mid 20th century when he noted that, “The principal effect of economic development (in Nigeria) has been seen in the increasing tendency to delimit individual holdings, both in Muslim and pagan areas.” HAILEY, *supra* note 41, at 789.

92. See FALOLA, *THE HISTORY OF NIGERIA*, *supra* note 39, at 35.

93. Ezeomah, *supra* note 83, at 2.

94. John Paden, *Islamic Political Culture and Constitutional Change in Nigeria*, 11 J. OF OPINION 24, 25 (1981).

95. Nafziger, *supra* note 46, at 176.

to only limited Fulani control, primarily in the periphery of the region.<sup>96</sup> Most of the inhabitants of the interior of Plateau were free from the Fulani conquest,<sup>97</sup> and thus Fulani institutions did not take root there. The Fulani were unable to exercise extensive control over Plateau, because its rugged terrain, coupled with the fiercely independent nature of its inhabitants, made both military conquest and subsequent administration too costly.<sup>98</sup> The Plateau region provided a refuge for people escaping a variety of potential overlords.<sup>99</sup>

Even in the 19th century Plateau was highly heterogeneous, and was composed of many small ethnic groups who lived independently but engaged in some trade with each other.<sup>100</sup> The various tribes that inhabited Plateau moved there in order to escape threats posed by slave-raiding expeditions in the coastal regions and the Islamic north, and to search for available land.<sup>101</sup> In the 19th century, the people of Plateau were primarily animists and had a less developed, less hierarchical political and social structure than did the Hausa/Fulanis.<sup>102</sup>

After the British took control of Nigeria in 1900, they created different governing structures in the North and South: the Protectorate of North Nigeria and the Protectorate of South Nigeria.<sup>103</sup> As is true to this day, southern Nigeria was richer than the north and had a stronger tradition of autonomy. However, as the North had a well-developed administrative structure and was governed by what was viewed as a “respectful” and conservative leadership, the British adopted a “hands-off” approach to the north.<sup>104</sup> The British institution of indirect rule largely left the Muslim leadership in place.<sup>105</sup> It also respected the *sharia* law of the north, as well as the customary laws of the area.<sup>106</sup>

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96. GAZETTEER, *supra* note 51, at 30–36.

97. NETTING, *supra* note 42, at 46.

98. GAZETTEER, *supra* note 51, at 31.

99. See Toyin Falola & A. Adebayo, *Pre-colonial Nigeria: north of the Niger-Benue*, in NIGERIAN HISTORY & CULTURE 56, 84–85 (Richard Olaniyan ed., 1985). This means that there was no one supreme *oba* or *emir* in Plateau. Rather, there were many leaders of small, discrete groups.

100. *Id.* at 83–84.

101. NETTING, *supra* note 42, at 46 (stating that, “The need to avoid slaving depredations seems to be reflected in a zone of dense population in the hills and immediately adjoining lowlands, with large areas of fertile plain to the south left empty.”). This observation is of significant import, as it may help us understand why control over fertile land in Plateau state—particularly in the Yelwa region—is contested. There may be only limited history of “control” by particular groups, thus allowing others to make competing claims.

102. *Id.* at 44; see also Falola & Adebayo, *supra* note 99, at 84–87.

103. FALOLA, THE HISTORY OF NIGERIA, *supra* note 39, at 68.

104. *Id.* at 70.

105. *Id.* Falola says,

[I]ndirect rule as deployed to consolidate power and to overcome the various obstacles posed by communications and by limitations of personnel and

The British arrived in Plateau region in 1904 in response to requests by the Niger Company, which faced hostile inhabitants and repeatedly closed trading routes.<sup>107</sup> For reasons similar to those faced by the Fulanis, the British were unable to subdue the inhabitants of the area in the early years of their rule.<sup>108</sup> It took the repeated use of armed force to quell uprisings and inter-ethnic violence. When the inhabitants were finally brought under control, the British created a somewhat different governance structure for Plateau. This structure was not based on rule by emirs, but on a high degree of self-rule at the local level.<sup>109</sup> Discussing the British approach to rule in Nigeria, Lord Hailey says:

The distinctive concepts which have determined the use of that system [Native Authority] are shortly as follows. It has in the first place avoided as far as possible the employment of any local authority which has not held a recognized position of influence derived from indigenous custom or tradition. Second, it has contemplated that the entities so employed (whether they have been Chiefs, Chiefs in Council, Councils of Headmen, or groups of Elders) should rely mainly on the authority they derive from indigenous custom when giving their aid in the furtherance of schemes of social or economic welfare promoted by the Administration.<sup>110</sup>

The Native Authority system gave chiefs and elders primary responsibility for the administration of local government, and they were particularly important in the creation and functioning of Native Courts.<sup>111</sup> As decision makers in this new dispute resolution process, local leaders would have continued to bring their deep local knowledge to bear on conflict resolution. Indeed, if, as one critic argues, the British purposefully kept formally trained

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finance. The ideological assumption was that the British and Nigerians were culturally different and the best way to govern them was through the institutions which they themselves had invented.

*Id.* He goes on to note that indirect rule allowed the British to govern at low cost by co-opting local rulers who continued to administer indigenous institutions.

106. Ezeomah, *supra* note 83, at 2. The version of *sharia* applied in Nigeria is the Maliki form which follows precedent, opinions and reasoning developed under the Sunni Muslim tradition. *Imams* and *emirs* are the key legal decision makers, interpreting the law to the case at hand. Under the Sokoto Caliphate the *emir* was the chief *imam* and served as the court of last appeal (the grand kadi). In contemporary Nigeria, *sharia* courts have been created for each state with a grand kadi appointed for each. See Paden, *Islamic Political Culture and Constitutional Change in Nigeria*, *supra* note 94, at 25.

107. Plateau Province was formally created by the British in 1926. See GAZETTEER, *supra* note 51, at 117–18.

108. *Id.* at 39–41.

109. *Id.* at 46–48.

110. HAILEY, *supra* note 41, at 452.

111. FALOLA, *THE HISTORY OF NIGERIA*, *supra* note 39, at 71; see also GAZETTEER, *supra* note 51, at 49–50.

lawyers out of the Native Courts, it seems likely that the indigenous dispute resolution norms which developed under customary law prevailed in Native Courts.<sup>112</sup>

In Plateau, the British attempted to create a tribunal for each tribe and even for sub-tribal units. Some large tribes had more than one court. The members of the courts acted as an advisory council for the Executive Chief, who served as President of the court. The British also created seven "Alkalai" Courts, for use by non-indigenous, Muslim inhabitants of Plateau.<sup>113</sup> When Plateau was divided into districts in 1927, each district was assigned District Heads, both "Pagan" (animist) and Fulani (Muslim). Starting in 1930, the "Pagan" District Heads began supervising tax collection, including collection of the cattle tax imposed on the Fulani herdsmen.<sup>114</sup> The notion was to move toward more extensive indirect rule and allow the local inhabitants greater control of the structures of governance. A further example of this approach is Lord Hailey's observation: "The scope of rule-making power of Native Authorities was extended in 1945 to embrace the definition and modification of Native law and custom. In the same year they were also given special power to deal with matters relating to the tenure of land . . . ."<sup>115</sup>

Because of the diversity of tribes in Plateau and variations in population density, soil fertility, and abundance or scarcity of land, there were differences among land-tenure norms.<sup>116</sup> For example, the Gazetteer reports that among the Angas tribe in the Pankshin Division (eastern Plateau), a man who cultivated land held tenure similar to freehold.<sup>117</sup> The report notes that farmland was sold, but for a low price, indicating relative abundance of land at the time. However, land in this area was not leased or pawned. The practices in Pankshin Division may be

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112. There has been criticism of the British approach to staffing Native Courts. Critics argue that the British chose to appoint tribal leaders rather than trained legal academics or practitioners to these positions. The result was a system in which individuals with little or no formal legal training, and beholden to colonial authorities for their lucrative positions, were in power. Such criticism, while valid, appears to discount the informal training and deep familiarity with social norms and customs that such leaders would have possessed. For a discussion of the drawbacks of the British model of staffing Native Courts see FALOLA, *THE HISTORY OF NIGERIA*, *supra* note 39, at 71.

113. GAZETTEER, *supra* note 51, at 49.

114. *Id.* at 119.

115. HAILEY, *supra* note 41, at 455.

116. Though the GAZETTEER states,

This mention of farming disputes brings us to the question of land tenure about which tribal customs do not differ very much. Generally speaking all the land originally belonged to the chief of the tribe or village, by right of priority of settlement and ability to defend his boundaries and no land was taken up for building or farming except with the consent of the chief.

GAZETTEER, *supra* note 51, at 113.

117. *Id.* at 166.

contrasted with those of the Jos Division (northern Plateau), where land was held in a manner more like a lease in perpetuity.<sup>118</sup> Land could be leased to or borrowed by others. Leases tended to be long-term with no set termination date, but with an annual payment in kind. Sale of land was rare in this area, except around the town of Ganawuri, where there was valuable fertile land.<sup>119</sup> In the Shendam Division, it seems that inhabitants held many sticks in the bundle of property rights, but not enough to warrant labeling their tenure as “freehold.” This land could not be sold and chiefs could dispossess inhabitants for disloyalty or as punishment for a serious crime such as murder.<sup>120</sup> The Gazetteer notes: “Disputes about the ownership of land are very rare, and when they do occur, they invariably arise out of a lease or loan.”<sup>121</sup>

In 1916, the British enacted the Lands and Native Rights Ordinance,<sup>122</sup> which created a peculiar bifurcated approach to land law in Nigeria. In southern Nigeria, most lands belonged to private citizens rather than the government. Some property was held by a “stool” (a seat of political authority within a communal land-holding ethnic group), some by communal or family groups, and some by individual ownership.<sup>123</sup> Land ownership and the sale of land were tracked in the south via a registry system.<sup>124</sup>

A very different system applied to northern Nigeria.<sup>125</sup> In the north, the British declared all land in the former Fulani fiefs to be public property. The fief system was abolished and ownership over land in northern Nigeria was transferred to the British crown. As owners of the land, the British government required those on the land to apply for occupancy permits, though the government routinely recognized

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118. *Id.* at 113.

119. *Id.* at 114–15 (the availability of “valuable” fertile land is indicative of a certain scarcity and may help explain the evidence of sale in the region).

120. *Id.* at 214.

121. *Id.* at 114. Note that the level of dispute could be low for several reasons. For example, if land is abundant it may be less costly to move rather than engage in dispute over ownership. If customary norms and claims are recognized as legitimate, there might be relatively few disputes over ownership. Finally, if disputes are suppressed, for some reasons, they would be less visible.

122. Land and Native Rights Ordinance, (1948) Cap. 105 (Nigeria).

123. Segun Famoriyo, *Land Tenure and Food Production in Nigeria*, 41 LAND TENURE CENTER NEWSL. 10, 14 (Land Tenure Ctr., Madison, Wis. 1973).

124. Nafziger, *supra* note 46, at 177.

125. *See* Land and Native Rights Ordinance, *supra* note 122.

customary rights of occupancy.<sup>126</sup> This system placed limits on the ability of outsiders to move into northern areas.<sup>127</sup> It also had the effect of creating segregated areas of “strangers,” or *Sabon Garis*. Settlers were those people whose relatives had been in the area longer than “non-indigenes” or “strangers.” Non-indigenes were granted fewer legal rights than settlers. This differential access to land, to local government services, and to political representation created tensions throughout northern Nigeria—tensions that remain to this day.

As a part of northern Nigeria, these same rules applied in Plateau State. Yet, because the British administrators showed significant deference to local customs there, and because authorities had greater difficulty “reaching” into the hinterlands of Plateau and exerting control, the actual *de facto* impact of the Land and Native Ordinance Act in much of Plateau may have been muted.<sup>128</sup> Instead, it seems that customary norms surrounding tenure rights, leasing, borrowing, pledging, and even sales of land, continued to develop alongside more extensive British control in cities such as Jos and in other northern states.<sup>129</sup> The British expanded the legal authority of the Native Authorities to control the use and disposition of land in 1945.<sup>130</sup> This ordinance,

[C]onfers on Native Authorities more extensive powers than they have in any other British dependency. They may make rules for the control of alienation and mortgaging, for prescribing that purchase at sale shall be subject to their approval, for regulating the allocation of ‘communal or family land’ and for controlling its use.<sup>131</sup>

Thus, just as they did during the pre-colonial era, local Nigerian authorities exercised extensive legal control over land resources under British rule. Finally, following independence in 1960, the regional government of Northern Nigeria enacted the Land Tenure Law. The Land Tenure Law declares:

... [T]he whole of the lands of Northern Nigeria, whether occupied or unoccupied, are hereby declared to be natives lands. . . . All native lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Minister and shall be held and administered for the use

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126. Naturally, the British could accept or reject an application. See Ezeomah, *supra* note 83, at 2.

127. The Lands and Native Rights Ordinance limited the right to acquire rights in land to “natives” only. Thus, non-natives, people moving from one part of Nigeria to another, or immigrants, could not acquire rights to land under this statute. See Adedipe et al., *supra* note 46, at 4.

128. HAILEY, *supra* note 41, at 452–54.

129. *Id.* at 789.

130. *Id.* at 790.

131. *Id.*

and common benefit of the natives, and no title to occupation and use of any such lands by a non-native shall be valid without the consent of the Minister.<sup>132</sup>

This law extended the system created by the Land and Native Rights Ordinance of 1916. Further, it created formal restrictions for landholding rights by non-northerners.<sup>133</sup> Under the 1963 Land Tenure Law, rights of occupancy could be held for an indefinite term. However such rights were often specified on the "Form of Application" as valid for 99 years on residential plots, 40 years for non-northern Nigerians on residential plots, and a sliding scale of up to 99 years for industrial plots.<sup>134</sup> In northern Nigeria, land was held by occupancy permits throughout the 1960s and 1970s. In the 1970s, farmers located on the outskirts of cities often had their permits revoked, and land was taken and redistributed for urban development. It appears that only minimal compensation was paid for these takings, leading to additional conflict over land.<sup>135</sup> These conflicts and concerns over the alleged speculation in land set the stage for the next major development in the property rights regime in Plateau State: the Land Use Act of 1978.

### *C. The Land Use Act of 1978*

The Land Use Act (LUA) was issued by the military government of Olusegun Obasanjo on March 29, 1978.<sup>136</sup> The law nationalized all land in Nigeria. At the time it went into effect, this law extinguished all existing rights to use and occupy land, including rights held by custom.<sup>137</sup> Citizens were required to apply to the government for certificates of occupancy, which were either statutory or customary, in order to make claims on land or, more significantly, to transfer rights in land. The law transferred primary responsibility for the management of communal land from the hands of chiefs, or *emirs*, to government officials.<sup>138</sup>

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132. Land Tenure Law, (1963) Cap. 59, §§ 4–6 (Nigeria).

133. Nafziger, *supra* note 46, at 177; *see also* C.M. McDowell, *Interpretation of the Land Tenure Law*, 14 J. OF AFR. L. 135, 155 (1970).

134. *See* McDowell, *supra* note 133, at 163.

135. Nafziger, *supra* note 46, at 177.

136. *See* Laws of the Federation of Nigeria. Revised Edition (1990), *available at* <http://www.nigeria-law.org/LFNMainPage.htm>.

137. *See* Bola Fajemirokun, *Land and Resource Rights: Issues of Public Participation and Access to Land in Nigeria*, AFR. CTR. FOR TECH. STUDIES, Mar. 25, 2002, <http://www.acts.or.ke/paplr/docs/SRCPAPLRR-Bolaspr.pdf>.

138. Adedipe et al., *supra* note 46, at 4.

President Obasanjo stated that one reason for enacting the statute was the “limiting, inhibiting and divisive nature of land tenure in the country.”<sup>139</sup> The statute was designed to curb land speculation and real estate price increases, to open access to land for both private and public use, and to promote tenure security.<sup>140</sup> The Land Use Act was offered as an attempt to rationalize a complex set of customary, common law, and statutory provisions dealing with land in Nigeria, thereby creating a uniform legal environment.

As noted earlier, the LUA vests control over land in State Governors, who have a fiduciary responsibility to hold the land in trust for the use and benefit of the citizens of Nigeria. In the 1989 case of *Makanjuola v. Balogun*, the Supreme Court of Nigeria held that the effect of the LUA is to vest absolute ownership of land in each state in the hands of the State Governor.<sup>141</sup> Under the statute, State Governors may issue certificates of occupancy for land in both urban and non-urban areas.<sup>142</sup> Local government officials may only issue certificates for customary rights of occupancy in rural areas. State Governors decide which areas are urban and which are non-urban, and thus maintain significant power over land-allocation decisions.

State Governors are aided by Land Use and Allocation Committees that advise them on land-management issues in urban areas and issues related to resettlement and to the revocation of rights to serve public need. Land Use and Allocation Committees are the “courts of first instance” for resolving disputes related to certificate awards and to the payment of compensation for land that is improved or taken for public use.<sup>143</sup> Appeals from committees are taken to officials at the Ministry of Justice and then to the formal court system.<sup>144</sup> Land Allocation and

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139. Fajemirokun, *supra* note 137, at 1.

140. *Id.*

141. *Id.* at 7 (citing the Supreme Court).

142. The purchaser of the right to occupy land presents a receipt for the sale of this right to the local government chairman. If approved by this official, the purchaser next applies to the land allocation committee. If approved at this stage, the state governor will issue a statutory certificate of occupancy which constitutes a 99-year lease. See Anna Knox, *Nigeria Country Profile*, in 130 COUNTRY PROFILES OF LAND TENURE: AFRICA, 1996, 110, 113 (Land Tenure Ctr., Univ. of Wis.-Madison, 1998).

143. Fajemirokun, *supra* note 137, at 4; see also Williams, *supra* note 88, at 603–05 (Williams notes that at least some of these committees were seriously comprised during the era of civilian rule in the late 70s, early 1980s (“their non-partisan was thoroughly violated”) and so were viewed as deeply biased towards the government. As a result, some committees were disbanded and replaced by *ad hoc* committees appointed by military leaders. This situation may have improved since the end of military rule, but this is not known.).

144. Williams, *supra* note 88, at 604.



Advisory Committees work with the local governments on similar issues.<sup>145</sup>

A statutory certificate of occupancy is typically issued for 99 years.<sup>146</sup> The certificate acts as a kind of lease agreement between the government (the lessee) and the certificate holder (the lessor). Before the right is granted, the state determines the amount of “rent” to be paid by the certificate holder.<sup>147</sup> Because statutory rights trump customary rights,<sup>148</sup> local governments may grant customary rights of occupancy only if there are no competing statutory rights.

A statutory certificate of occupancy confers on the certificate holder a set of rights, including the right to occupy, use, and improve the property. This bundle is clearly thinner than that of a fee simple owner under Anglo-American law. For example, the certificate holder cannot sell, gift, or sublet land without the consent of the State Governor.<sup>149</sup> However, bequests of rights held under statutory and customary certificates of occupancy are managed by customary-law principles, not by statutory principles.<sup>150</sup>

Under the customary land-tenure system, the chief, *oba*, headman, or *emir* all held significant power.<sup>151</sup> In some cases chiefs and *emirs* abused their powers, allocating land to favorites, limiting access to strangers, and requiring payoffs to permit land transactions to occur.<sup>152</sup> During the colonial period, the power that some chiefs and *emirs* held over land allocation ebbed as population growth increased the use of private sales of land.<sup>153</sup> The Land Use Decree furthered this process, removing from traditional leaders their power to distribute a valuable resource—land—and with it, the income they garnered from land transactions.<sup>154</sup> Donald C. Williams argues: “The Land Use Decree . . . was

145. *Id.* at 591.

146. Knox, *supra* note 142, at 113.

147. Adedipe et al., *supra* note 46, at 4.

148. *Id.*

149. Fajemirokun, *supra* note 137, at 3.

150. Adedipe et al., *supra* note 46, at 4.

151. *Id.* at 3.

152. *Id.*

153. *Id.* at 5 (Adedipe et al. note, “Even prior to the Land Use Act, the old notions of royal estates or stool land had been extensively eroded. Consequently, the political and cultural power inherent in the exercise of land allocation by traditional rulers was being undermined.”).

154. Williams, *supra* note 88, at 587 (noting that, “Land reforms often signify one element of a larger trend involving expansion of the state at the expense of other forms of societal authority. As such, they represent the frontier of a widening struggle over

designed to pose a direct challenge to alternative sources of societal authority by relegating all private transactions in land to government agencies.”<sup>155</sup>

The Land Use Act shifts the power to allocate land away from traditional leaders to government officials. At the same time, those individuals who held substantial local knowledge of the land, its traditional allocations and uses are no longer called on to make allocation decisions. Instead, individuals who may have little personal knowledge of the specifics of land holding and land use are called upon to decide who has which rights. Severing the link between the local knowledge and allocation and use decisions is especially problematic in areas where customary law is widespread, because customary law depends upon the memory of local leaders. Written land records are limited in Nigeria. Local leaders reach decisions based on their intimate knowledge of individuals and their needs.<sup>156</sup> Given the paucity of written records, government officials are unlikely to have either this intimate knowledge or a reasonable substitute.

By placing the power to allocate land rights in the hands of politicians—state governors—and, in turn, Land Use Allocation Committees and Land Allocation and Advisory Committees, the LUA has created a system in which government officials enjoy huge bargaining power advantages in issuing certificates or allowing a transfer or sale to take place.<sup>157</sup> Quoting an article entitled “Establishing a Business in Nigeria” Williams observes:

With the arbitrary powers given to the Governor of the state as regards the issuance of a C of O [certificate of occupancy], and coupled with the ensuing bureaucratic red-tapism, it is almost easier to pass a camel through a needle’s eye than to get this certificate. In the case of transfer of land, where the Governor’s consent is required before such transfer (be it temporary or permanent) can be effected, the consent is usually withheld until some exorbitant and ridiculous transfer fee (consent fee) is paid.<sup>158</sup>

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legitimacy and control between ‘state’ and ‘society’ . . .”); *see also*, Adedipe et al., *supra* note 46, at 5 (who write, “Furthermore, it appears that by nationalizing land in the country, the very fabric upon which traditional customs and practices were woven has been threatened.”).

155. Williams, *supra* note 88, at 587.

156. This is not to imply that decision making by local leaders was perfect, but rather, it is to emphasize the important role that local knowledge of social norms and customs related to property rights played with this particular group.

157. “Rather than curtail land speculation, as was intended, the Land Use Decree opened the door for land to be acquired by government officials and used for political patronage. This is reinforced by the fact that members of the land use and allocation committee are appointed by the governor and the fact that the governor has discretion over rent charges.” *See* Knox, *supra* note 142, at 111.

158. Williams, *supra* note 88, at 592.

These same government officials can reward favorites with certificates of occupancy.<sup>159</sup> Cronies, family members, and politically well-connected individuals have much less difficulty obtaining certificates than do poorer, unconnected, and less well-educated citizens of Nigeria.<sup>160</sup> In a study of the effects of the Land Use Decree, Peter Koehn maintains: "State government officials have effectively barred the rural and urban laboring classes from all types of statutory rights of occupancy."<sup>161</sup>

The Land Use Act suffers from other shortcomings. Due to the high level of corruption in the public sector, individuals distrust the Nigerian bureaucracy.<sup>162</sup> Because of their suspicion of public officials, many people avoid seeking certificates, since the issuance of the certificates requires proof of property tax payment for the preceding three years.<sup>163</sup> This requirement apparently leads officials to demand bribes before they declare tax records "clear."<sup>164</sup> Such corruption obviously increases the costliness of the process.

159. Fajemirokun, *supra* note 137, at 5 (stating, "[T]he vesting of land in State Governors has created powerful systems of authority and political patronage . . . those with access to the corridors of power are able to easily acquire land and sometimes through the dispossession of other poorer groups.").

160. Williams, *supra* note 88, at 598 (observing that, "A growing body of evidence seems to suggest that the benefits of Nigeria's land development and plot allocation schemes are chronically imbalanced. Past studies of improprieties suggest that those with wealth and close connections to State Governments are overwhelmingly beneficiaries of these programmes."); see also CONTRACTING FOR PROPERTY RIGHTS, *supra* note 23, at 17 (stating, "All things equal, those interest groups with greater wealth, size, and homogeneity will have more resources to influence politicians regarding the assignment of property rights." Plateau state is composed of many small groups, but is increasingly populated by members of larger, politically powerful ethnic groups: Hausa and Fulani in particular.).

161. Peter Koehn, *Political Access and Capital Accumulation: An Analysis of State Land Allocation Processes and Beneficiaries in Nigeria*, 12 AFR. DEV. 163, 179 (1987).

162. See generally Abdullahi, *supra* note 21, at 225 (discussing public and government officials' criticism of the Senate's proposed legislation to weaken the Independent Corrupt Practices and Other Related Offenses Commission).

163. Williams states:

[A]ll claims on land must be supported by property tax receipts from three preceding years, or evidence of tax clearance under the terms of the pay-as-you-earn system. Since many landlords have consistently evaded the payment of taxes on rented properties, there is a real possibility that processing a certificate of occupancy could lead to criminal prosecution. Those who cannot avoid the necessity of obtaining such a document have to go to great lengths to pay out the necessary bribes for securing a tax clearance certificate from the State's revenue office.

Williams, *supra* note 88, at 592.

164. *Id.*

Further, the Land Use Act limits the size of land one may own, depending on whether it is urban or rural and whether one is a farmer or herder.<sup>165</sup> Such a one-size-fits-all (or almost all) approach to land use ignores the differing abilities of individuals to successfully manage land. This approach is reminiscent of the United States government's approach to settling the American west in the 19th century, in which 160 acre plots of land were parceled, and settlers were forced to live within the constraints of this arbitrary limit.<sup>166</sup> In Nigeria, the effects of the Land Use Act have been characterized this way: "The Land Use Act has arguably exacerbated the stress on land caused by population increase, and increased the risk of long-term soil and environmental degradation."<sup>167</sup>

The Land Use Act extinguishes rights in undeveloped urban land over half a hectare and limits the ability of individuals to possess multiple plots of developed land.<sup>168</sup> It has been noted that valuable property is more likely to be registered than less valuable land, presumably because the perceived benefits of registration exceed the costs of operating within the system.<sup>169</sup>

The Nigerian system for registering land is inefficient, both because it is subject to rent seeking, and because it is not capable of handling registrations efficiently due to personnel shortages, poor training, and lack of equipment.<sup>170</sup> Registry offices often lack maps and other evidence of property boundaries. For these reasons, they may have difficulty validating evidence provided by claimants. Over time, the costs associated with registering property have risen significantly.<sup>171</sup>

The many problems associated with the Land Use Act suggest that *de facto* property rights are quite insecure—unless, perhaps, one has useful political connections. As a result of these limitations, individuals often skirt

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165. Williams states,

Statutory rights of occupancy in urban areas were strictly limited to 0.5 hectare of 'undeveloped' land, while the number of 'developed' plots was subject to the determination of the State Governor's Office. Customary rights of occupancy were to be confined exclusively to rural areas, where plots were permitted to be as large as 500 hectares of farmland or 5,000 hectares for grazing.

Williams, *supra* note 88, at 596.

166. Douglas W. Allen, *Homesteading and Property Rights: Or, "How the West was Really Won"*, in *THE POLITICAL ECONOMY OF THE AMERICAN WEST* 21, 26–29 (Terry L. Anderson & Peter J. Hill eds., 1994).

167. Adedipe et al., *supra* note 46, at 10.

168. Land Use Act, *supra* note 15, § 10.

169. See Williams, *supra* note 88, at 593.

170. *Id.* at 590.

171. *Id.* at 592 (noting that, "In Oyo State, a revision of filing fees in 1984 by the Governor increased the cost of this procedure (filing for a certificate of occupancy) by 500 per cent from Nigerian 50 to 250."). Fajemirokun, *supra* note 137, at 5 (observing that, "It is also noteworthy that the transaction costs for obtaining certificates of occupancy have become important sources of government revenues.").

the *de jure* land law: “The tedious legal and bureaucratic formalities required for allocation of land in accordance with the Act have resulted in threatening the very survival and efficacy of the Act. It is thus open knowledge that means of circumventing the spirit and letter of the Act are being actively sought.”<sup>172</sup>

As things currently stand in Plateau, a combination of barriers is working to block the development of a smoothly functioning, legal real-property market. These myriad problems lead citizens to circumvent the strictures of the Act. Further, the perceived injustices of the system, coupled with ineffective enforcement by the state, may lead to a more serious problem: citizens taking “justice” into their own hands and pursuing a strategy of violence over cooperative trading, the past property-rights norm.<sup>173</sup>

### III. BLOCKING THE EVOLUTION OF PROPERTY NORMS: AN ANALYSIS OF THE PROBLEM

With this background in mind, we can consider why violent conflict over property is plaguing Plateau State. As we have seen, a number of conflicts in Plateau involve Christian farmers and Muslim herders competing for fertile land. Rising population, increasing heterogeneity, and ineffective government enforcement combine to increase the costs associated with negotiating property rights claims.<sup>174</sup> It appears that existing methods for managing conflict have failed: neither customary norms nor legislative mechanisms are sufficient to stop violent conflict. A close examination of the customary legal environment and the Land Use Act reveals that a gap likely exists between the two.<sup>175</sup> This gap may help explain why people in Plateau have turned to violence to solve property-rights disputes.

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172. Adedipe et al., *supra* note 46, at 10. An example of “skirting” is the following: Those who do choose to register any sale often take advantage of prevailing inadequacies in the administrative process. After payment is made for a plot of land, it is quite common to locate a lawyer for what can only be described as the appropriate ‘doctoring’ of documents, mainly in order to convey the impression that the purchase was made prior to 29 March 1978, when such unregulated sales were still legal . . . even when fraud is detected, the documents are not always rejected. Often such discrepancies simply provide one more avenue for bribery.

Williams, *supra* note 88, at 594.

173. See Anderson & McChesney, *supra* note 25, at 46–48.

174. See *id.* at 49–52.

175. Discussing evolving property rights for agricultural land in Thailand, Gershon Feder and David Feeny write: “If private property rights are not viewed as legitimate or

Evidence indicates that Plateau was settled by many small ethnic groups who lived in relative isolation due to the geography of the region and group preference.<sup>176</sup> These groups developed a rich customary law with a wide-ranging set of property rights and contracting norms that allowed them to trade rights internally, and also provided mechanisms for trading rights with strangers. Until recently, relatively peaceful trading of property rights predominated, and violence was seldom used to settle property-rights claims.<sup>177</sup>

The variety of land rights and contracting vehicles is striking, though by no means uncommon in communal property regimes.<sup>178</sup> This variety indicates a rich institutional response to the problem of internalizing externalities.<sup>179</sup> Despite the imposition of legislation by both the British and post-colonial governments that was designed to change the property-rights environment, the traditional communal property regime has persevered. The persistence of this system may evidence the importance of protecting family-based relationships, of providing incentives to cooperate and coordinate production activities in a useful manner, and of effectively allocating resources.<sup>180</sup> Indigenous dispute resolution—which was accessible, relatively inexpensive, and largely transparent—may also have helped to spread information, promote cooperation, and lessen conflict within and among ethnic groups.<sup>181</sup>

There is evidence from Plateau that rights to land existed on a continuum, from traditional communal property rights to tenure rights that closely resembled freehold. Not surprisingly, more extensive rights existed in those areas where investment in land was high, as was the case, for example, with the Kofyars, who invested heavily in building terraces and in fertilizing their relatively scarce land.<sup>182</sup>

The thickness of the property-rights bundle individuals held under customary law meant that individuals had increased opportunities to trade these rights and, in turn, to benefit from expanded trading

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are not enforced adequately, de jure private property becomes de facto open access.” See Feder & Feeny, *supra* note 22, at 137 (Discussing that open access resources, owned by no one, are oftentimes subject to destructive competition that results in the now famous “tragedy of the commons.” This may well be an important part of the problem in Plateau.).

176. See discussion *supra* pp. 21–22.

177. See discussion *infra* at 43.

178. See generally ELINOR OSTROM, GOVERNING THE COMMONS (1990) (discussing varied solutions to the problem of managing common property).

179. There is evidence that throughout Nigeria, the customary legal environment provided a great variety of contracting vehicles, private bargaining mechanisms, related to land tenure. See generally T. OLAWALE ELIAS, NIGERIAN LAND LAW AND CUSTOM (3rd ed. rev. 1962) [hereinafter NIGERIAN LAND LAW].

180. COOTER, *supra* note 17, at 4.

181. See BOHANNAN, *supra* note 52.

182. See NETTING, *supra* note 42, at 158–68.

opportunities, so long as the rights were enforced. To the extent that individuals hold thicker, as opposed to thinner, bundles of property rights, they have increased opportunities to take advantage of dispersed local knowledge, pursue entrepreneurial opportunities, and gain from trade. A thicker bundle may indicate additional flexibility to experiment with different approaches to solving allocation and use problems. In their isolated environment, the inhabitants of Plateau seem to have benefited from the broad right to lend, pledge, use, and borrow land.

The rich customary legal environment also indicates that the law was relatively elastic, responding to changing needs over time through an evolutionary process.<sup>183</sup> While communal property remained the norm in Plateau State, there was movement over time towards more individualized tenure over land.<sup>184</sup> Where the demand for land increases, either because of changes in population or technology, one would expect a community to expend more resources defining property rights and to move from communal ownership toward more individualized tenure, either in the form of sale or unredeemed pledges.<sup>185</sup> Such a move is one way for previously homogeneous communities to deal with the costs of information asymmetries that arise as the network of contacts and potential trading partners increase.<sup>186</sup> In Plateau, individuals recognized the benefits to be gained from the greater specification of property rights.<sup>187</sup> These unknown entrepreneurs “created” a new right: the right to

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183. See David E. Ault & Gilbert Rutman, *The Development of Individual Rights to Property in Tribal Africa*, 22 J.L. & ECON. 171 (1979).

184. See discussion *supra* pp. 18–19; see also Demsetz, *supra* note 14, at 350. Demsetz states:

I do not mean to assert or to deny that the adjustments in property rights which take place need be the result of a conscious endeavor to cope with new externality problems. These adjustments have arisen in Western societies largely as a result of gradual changes in social mores and in common law precedents.

*Id.* We see evidence of a gradual shift in social mores, in favor of some individualization of tenure, in Nigeria also.

185. See Demsetz, *supra* note 14, at 356; CONTRACTING FOR PROPERTY RIGHTS, *supra* note 23, at 16–17.

186. Feder & Feeny, *supra* note 22, at 140.

187. Martin Chanock, *A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Colonial Africa*, 32 J. OF AFR. HIST. 65, 72–73 (1991) (“But one of the aspects of pressure on land, taking the area as a whole, was the growth of cash cropping. Those who were doing well wanted more land and were prepared to innovate with forms of tenure. Their response to scarcity was far from traditionalist.”).

sell property.<sup>188</sup> By accommodating this entrepreneurial activity, the indigenous legal system expanded options for allocating property rights.

The limited evidence that exists about the subject of land sales indicates that the indigenous legal system evolved in response to a changing environment.<sup>189</sup> The use of the unredeemed pledge, for example, demonstrates a shift towards increased individualization of tenure, and hence, an evolution of traditional communal-property norms. A movement towards greater individualization of land-tenure rights will occur when the marginal benefits of creating and enforcing the rights exceed the marginal costs associated with the new rights.<sup>190</sup>

In Plateau, there is evidence that such a process took place in mid-20th century. In the case of the Kofyar people, Netting notes that:

The Kofyar insist that every square inch of arable soil, both village and bush, has an owner, a single person to whom the land belongs and who alone may decide on its use. This is probably a direct outgrowth of intensive farming. Wherever land can be made to produce heavily and continuously over a long period of time, it increases in value to both the occupant and his heirs.<sup>191</sup>

With the Kofyar, both factors may have been at work, resulting in a distinctive institutional response to the issue of land allocation.

Another interesting example of the flexibility of the customary legal environment in Plateau State—one that promoted homogeneity and its attendant benefits by aligning property-rights expectations—was the provision for incorporating, or adopting, “strangers” into kinship groups.<sup>192</sup> The mechanism of allocating property to strangers in perpetuity was, in essence, a method for *inducing homogeneity* and thereby managing problems associated with heterogeneity.<sup>193</sup>

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188. See Anderson & Hill, *supra* note 14, at 119–22; see also TERRY L. ANDERSON & PETER J. HILL, *THE NOT SO WILD, WILD WEST: PROPERTY RIGHTS ON THE FRONTIER* 35 (2004).

189. Ault & Rutman, *supra* note 183, at 171. Ault & Rutman states: tribal institutions governing land use and occupation respond to changes in economic conditions. As population pressure or the importance of commercial agriculture increases, changes in the land tenure system should result in a system that defines the individual rights to the land more clearly. As land becomes scarce in a communal system, private and social benefits will diverge unless the individual bears the full costs of his actions.

*Id.*

190. Anderson & Hill, *supra* note 14, at 119.

191. NETTING, *supra* note 42, at 159.

192. NIGERIAN LAND LAW, *supra* note 179, at 107–09. There were a number of other methods, under African customary law, to facilitate the incorporation of strangers into a group. Discussing the ways in which group members acted to bring strangers within the fold of the group, Elias notes, “Rules of hospitality, the protection of friends, inter-marriage, and inter-tribal associations, all of which generally make it possible for members of the group to plead the strangers’ cause in a vicarious capacity.” ELIAS, *supra* note 46, at 106.

193. For example, the GAZETTEER notes:



The process typically began whenever a stranger allied him or herself with a member of the community and lived with that member's family, gradually establishing a good reputation.<sup>194</sup> T.O. Elias notes: "The practice has almost always been that strangers would attach themselves to an influential person with whose family they would normally have been lodging for some period prior to a formal request being made on their behalf by their host."<sup>195</sup> During this period the stranger absorbed the norms and expectations of the adoptive group.<sup>196</sup> The adoptive family monitored this process to ensure that the stranger was trustworthy and otherwise a good "fit" for the group.<sup>197</sup> When the adoptive family was assured this was the case, the head of the family would intercede on the stranger's behalf and ask for land, assuming underutilized land was available. Presumably, the adoptive family had its own reputation on the line in such a process, and so it monitored strangers with special care. The chief typically consented to an application for land ownership if:

(1) the stranger . . . [was] of good report, (2) he . . . [was] ready and willing to obey the accepted social norms of the adoptive group and (3) he . . . [had] respect for and loyalty to the head chief as well as the elders of the community. Land so granted is held by strangers in perpetuity *in exactly the same way and subject to the like conditions* of customary tenure as bind the members of the owner-occupiers themselves (emphasis added).<sup>198</sup>

This process turned the stranger into a quasi-family member and encouraged the adopted person to align his or her expectations regarding

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Land for farming may be obtained by a stranger in East Mama on approaching the village-head and elders and no rent or payment is asked. In Kwarra and the Northern Mama villages a stranger, as a rule, is taken into some one's house and then he shares the farm land of that householder.

GAZETTEER, *supra* note 51, at 279.

194. NIGERIAN LAND LAW, *supra* note 179, at 111.

195. *Id.*

196. This process would develop a sense of reciprocal duties and rights within the group. As Bruce Benson, notes, "Reciprocities are the basic source both of the recognition of duty to obey law and of law enforcement in a customary law system. That is, individuals must "exchange" recognition of certain behavioral rules for their mutual benefit." BRUCE BENSON, *THE ENTERPRISE OF LAW* 12 (1990).

197. Nobel Laureate George Stigler says that information [transaction] costs represent, "the costs of transportation from ignorance to omniscience; and seldom can a trader afford to take the entire trip." The stranger mechanism did not take adoptive families to omniscience, but moved them a good way from ignorance towards more complete knowledge of the stranger. George Stigler, *Imperfections in the capital market*, 73 J. OF POL. ECON. 287, 291 (1967).

198. NIGERIAN LAND LAW, *supra* note 179, at 111.

the use and transfer of property with those of the group.<sup>199</sup> One effect was to lower the transactional costs associated with group coordination, cooperation, resource allocation, and use. Another effect was to reduce future costs associated with monitoring and enforcing obligations.

This mechanism reduced the transactional costs associated with dealing with heterogeneous agents.<sup>200</sup> When the ability to engage in impersonal exchange was limited, this mechanism personalized property-rights trading.<sup>201</sup> While the process was costly and slow, it was a step in the evolutionary process from personal to impersonal exchange. The customary-law principle for dealing with strangers can thus be seen as a way for outsiders to develop a reputation for trustworthiness within an unfamiliar group. This feature of customary African law, while cumbersome, may have worked to solve the problem of increased heterogeneity while ensuring better use of underutilized resources.<sup>202</sup>

Preserving or inducing homogeneity may have been an important strategy for these groups for several reasons. First, homogeneous groups can coordinate production and other activities in a less costly manner than heterogeneous groups.<sup>203</sup> For farmers working with rather primitive, labor-intensive technology, low-cost coordination is valuable.<sup>204</sup> Homogeneous groups are able to cooperate at a lower cost than heterogeneous groups.<sup>205</sup> Individuals within the group are likely to have repeated interactions with other group members. They may generate higher levels of goodwill and trust in each other.<sup>206</sup>

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199. *Id.* at 109.

200. Jürg Niehans, *Transaction Costs*, in 4 THE NEW PALGRAVE: A DICTIONARY OF ECONOMICS 676, 676 (John Eatwell, Murray Milgate, & Peter Newman eds., 1987) (stating, “Transaction costs arise from the transfer of ownership or, more generally, of property rights. They are a concomitant of decentralized ownership rights, private property and exchange.”); *see generally* Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, (1960).

201. *See generally* Douglass C. North, Economic Performance through Time, Nobel Prize Lecture, (Dec. 9, 1993), *available at* <http://nobelprize.org/economics/laureates/1993/north-lecture.html>; DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990). Kevin A. McCabe, *Reciprocity and Social Order: What do experiments tell us about the failure of economic growth?*, in FORUM SERIES ON THE ROLE OF INSTITUTIONS IN PROMOTING ECONOMIC GROWTH (Mercatus Ctr. at George Mason Univ. 2003), *available at* <http://www.mercatus.org/pdf/materials/274.pdf>.

202. For a discussion of the effects of heterogeneity on property-rights contracting, *see* CONTRACTING FOR PROPERTY RIGHTS, *supra* note 23, at 22–23.

203. COOTER, *supra* note 17, at 3–4.

204. NETTING, *supra* note 42, at 178–80 (on how community helped each other).

205. Libecap, *supra* note 20, at 148–49.

206. *See* Kevin A. McCabe & Vernon L. Smith, *Goodwill Accounting in Economic Exchange*, in BOUNDED RATIONALITY: THE ADAPTIVE TOOLBOX 319, 319–40 (G. Gigerenzer & R. Selten eds., 2001).

Transactional costs incurred by homogeneous groups are low compared to those incurred by heterogeneous groups, because homogeneous groups can more effectively rely on social norms to promote compliance.<sup>207</sup> Higher cooperation levels mean that fewer resources are spent defining, monitoring, and enforcing property rights. In Plateau, studies of the 1930s and 1960s suggest that violent conflict over property was relatively rare.<sup>208</sup> Of particular interest are Robert Netting's observations of the relationship between the Kofyar and Fulani herdsmen in the 1960s:

The pastoral Fulani did not have access to Plateau pastures until after British pacification and the eradication of the tsetse fly. Several households now move up and down the Kofyar escarpment according to the season, and some others have settled in the lowlands. Their milk products find little market among the beer-drinking Kofyar, but individuals compete in offering money and services to induce Fulani to camp on and thus manure their fields. With the exception of venturing freely to new farms on the plain and markets within a twenty-mile radius, Kofyar show little change in their tolerant relations with neighboring groups. Few of the strangers in their territory enter into direct competition with the Kofyar, and those who do, such as the Tiv filtering north from the Benue, are merely regarded with mild suspicion.<sup>209</sup>

As Libecap notes, however, when groups become heterogeneous and have a limited history of interaction, they may need to turn to more formalized government institutions to define and enforce land rights.<sup>210</sup>

The lengthy and costly process for inducing homogeneity through adoption may be contrasted with the short-term loan, which serves as a

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207. Libecap, *supra* note 20, at 144-45. *See also*, Niehans, *supra* note 200, at 678 (stating, "With increasing complexity, transaction costs tend to increase very rapidly . . . This is the basic reason for the emergence of market economies consisting of a network of bilateral exchanges. Politics may be interpreted as the arena in which multilateral transactions are typically made.").

208. *See* discussion *supra* pp. 24-25; Libecap, *supra* note 20. Netting notes that, "With land scarcity and individual tenure, and lacking any sort of survey or written records, it is obvious that the Kofyar should have land disputes . . . Relatively few disputes concerning land come before the courts, whether clam or village moots or the Native Authority courts officially administering customary law. In comparison with arguments over women, divorce, and the repayment of bride price, land cases make up less than 5 percent of the disputes heard before NA courts. My impression is that a good many of the disputes over land ownership may be settled by informal hearings in a local clan segment or a village."

NETTING, *supra* note 42, at 172.

209. NETTING, *supra* note 42, at 53.

210. Libecap, *supra* note 20, at 145; *see also* Ruth S. Meinzen-Dick & Rajendra Pradhan, *Legal Pluralism and Dynamic Property Rights*, at 5, (CAPRI, Int'l Food Pol'y Res. Inst., Working Paper No. 22, 2002), <http://www.capri.cgiar.org/wp/capriwp22.asp>.

means for allowing individuals outside the group limited access to valuable resources.<sup>211</sup> Compared with long-term loans or sales of real property, the short-term loan may also have lower transactional costs, particularly when resources are relatively abundant. The reason is that less is at stake because of the shorter term of the contract. Parties to a short-term contract, therefore, likely spend fewer resources outlining rights and obligations. Monitoring costs also are correspondingly lower, as are the corresponding transactional costs. Thus, in cases where problems of heterogeneity cannot easily be overcome—such as most trades between animists and Muslims, Christians and Muslims, or Fulanis and Taroks—the short-term loan under customary land law is a cost-effective contracting mechanism for trading property rights and reallocating a resource.<sup>212</sup>

This brings us to the recent conflict in Plateau State. In Plateau, population size and heterogeneity are increasing.<sup>213</sup> An increase in population places additional demands on the land resources, thereby raising its value. At the same time, increased heterogeneity leads to higher transactional costs when bargaining for land rights. In the absence of a viable enforcement mechanism, these costs escalate rapidly. The combination of poorly enforced rights, increased competition, and the increased heterogeneity of actors might lead to fewer property-rights trades and more violence.<sup>214</sup>

As previously discussed, customary land law provided two methods for dealing with heterogeneous actors: a) adoption; or b) the short-term loan. Until recently, herders used the short-term loan of land to acquire rights to graze and water livestock.<sup>215</sup> Such loans presented “no permanent loss of land to the customary owners.”<sup>216</sup> These loans provided benefits to both parties to the transaction: farmers had fields of stubble grazed and manured, while herders gained access to grazing grounds not otherwise open to them. As one commentator remarks: “In the past 60 to 70 years relationships between herding and farming groups in the use of land for grazing and cultivation were generally friendly.”<sup>217</sup>

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211. This was a common way for herders to acquire temporary use of land as the moved from one location to another, grazing their animals. *See* Ezeomah, *supra* note 83, at 3.

212. *See* GAZETTEER, *supra* note 51, at 114 (note however, that loans do generate disputes. The GAZETTEER comments that while there were few disputes over property in the 1930s, those that did come to the attention of this colonial authority typically involved loans or leases).

213. *See Conflict in northern Nigeria more about land and livelihood than religion*, *supra* note 12.

214. *See* Anderson & McChesney, *supra* note 25, at 49–52.

215. *See* Ezeomah, *supra* note 83, at 3.

216. *Id.*

217. *Id.* at 5.

As the desert spreads southward, limiting grazing and watering opportunities, herders from the north are moving into Plateau, presumably seeking more permanent rights to such resources.<sup>218</sup> At the same time, as the population of settled farmers increases, there is an increase in the demand for farmland.<sup>219</sup> The two demands clash. Under customary law, these heterogeneous parties were able to use the short-term loan to allocate grazing and watering rights. However, this kind of temporary solution might no longer be workable if the rising value of property gives short-term lessees incentives to breach the contract and remain on the land.

In such situations, the customary-law mechanism of “adopting” strangers should come into play. However, this customary mechanism, which worked effectively to incorporate small numbers of strangers, might simply be too cumbersome and too slow to incorporate larger groups of strangers. As a result, a movement towards the increased individualization of tenure is expected. In other words, customary law is expected to adapt and allow for increased use of the sale of property.

However, this movement is blocked by the Land Use Act, which promotes tenure insecurity.<sup>220</sup> As the value of land increases, people holding insecure property rights will seek ways to secure their rights. Indeed, under the Land Use Act, herders have special incentive to assert claims to property, because the statute allows them to seek rights to as many as 5,000 hectares of land, while farmers may only seek a maximum of 500 acres.<sup>221</sup> Thus, herders have an opportunity to capture

218. One view states that,

Plateau State has an estimated cattle population of 1.07 million in the hands of Fulani nomads. . . . The rapid growth of cattle population on the Jos Plateau has resulted in over-grazing and very stiff competition for land between sedentary farmers and nomadic Fulanis which is often expressed in violent clashes between the two groups.

*Natural Resources and Development—Plateau State*, ONLINE NIGERIA, MAR. 3, 2003, <http://www.onlinenigeria.com/links/Plateauadv.asp?blurb=464>.

219. In 1978 the number of hectares in crop cultivation in Plateau was 883,221. By 1987 the number had increased to 1,099,842, which represents a 24.5% increase. See DEP'T OF PLANNING, PLATEAU STATE STATISTICAL YEAR BOOK (Nig.), table 15 at 19 (1981–1987).

220. Fajemirokun, *supra* note 137, at 6; see also Knox, *supra* note 142, at 110 (noting, “The legislation [the Land Use Decree] has been fraught with problems, not the least of which has been heightened tenure insecurity emanating from the government’s liberal use of its compulsory acquisition right and general public confusion over the law’s provisions.”).

221. Land Use Act, *supra* note 15, § 6(2).

a large share of the rents associated with rising property value in the Plateau area.

The Land Use Act might also limit opportunities for cooperative indigenous dispute resolution. Previous institutional arrangements gave local leaders a significant voice in dispute resolution over property rights. The process created by the LUA envisions a much more limited role for such leaders, that of providing evidentiary material. Although this role is useful, it means that current decision makers are not accountable to the community in the way local leaders were. Individuals may also encounter problems negotiating certificates of occupancy with government officials, who have significant bargaining power vis-à-vis applicants, and can thus hold out for bribes. If this hold-out problem is real, as Williams argues, then renegotiations in response to changes in the environment are also more costly and occur less frequently than under a customary law regime.<sup>222</sup>

Government will normally provide increased clarification of property rights and enforcement when property values rise and heterogeneity increases.<sup>223</sup> However, if government attempts to define and enforce rights fail, then people will be forced to skirt formal *de jure* processes. In Plateau, the rights of settled farmers and incoming herders are insecure under the current amalgamation of customary law and land-use legislation.<sup>224</sup> As the value of the land around these groups rises, members of each seek to capture the correspondingly high rents by excluding members of the other. Corrupt government institutions provide no real alternative conflict resolution, and the older customary system may be unable to process this level of change.<sup>225</sup> In such a situation, resorting to violence may be less costly than negotiating a peaceful transfer of property rights.<sup>226</sup>

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222. Meinzen-Dick & Pradhan, *supra* note 210, at 15.

223. Libecap, *supra* note 20, at 144–45.

224. See *Conflict in northern Nigeria more about land and livelihood than religion*, *supra* note 12.

225. Meinzen-Dick and Pradhan note:

In some contexts of social and political change, legal pluralism [i.e., situations in which various legal systems, such as statutory law, customary law, religious law, and local norms, overlap] can increase uncertainty for local resource users. This is especially seen when statutory law does not recognize customary rights, and those with greater political connections, knowledge of state law, or access to the courts uses (sic) state law to override customary rights, in order to capture resources.

Meinzen-Dick & Pradhan, *supra* note 210, at 13.

226. See generally Anderson & McChesney, *supra* note 25; John Umbeck, *Might Makes Rights: A Theory of the Formation and Initial Distribution of Property Rights*, 19 *ECON. INQUIRY* 38, 38–59 (1981).

By formalizing and centralizing decision-making about land use and land occupancy, the Nigerian government has blocked the evolutionary development of customary land law. The Act replaces indigenous dispute-resolution institutions with bureaucratized, corrupt government institutions. Rather than rely on decentralized legal decision making, the Land Use Act creates a formalized and centralized system that is expensive for individuals to use. This system, therefore, reduces experimentation in legal problem solving, and it leads to decreased jurisdictional competition. The system is riddled with problems, including the time-consuming nature of the process, costliness, corruption, favoritism, and inaccessibility for citizens living in rural areas.

Legislation such as the Land Use Act is more rigid and less responsive to community needs than customary law because it is removed from individuals who hold dispersed local knowledge of each dispute and the potential impacts of the judgments it imposes. By removing land-use decision-making authority from local leaders who represent homogeneous groups, the Land Use Act discourages these groups from developing ways to communicate knowledge, coordinate activities, and cooperate. The Land Use Act, in effect, promotes the heterogenization of relations.

The Act blocks the development of a land sales market, forcing individuals to rely on government officials to allocate this resource. This keeps property and land relations in a state of personal exchange, but without the enforcement mechanisms that existed under customary law. Thus, the Land Use Act fails to solve problems associated with heterogeneous agents while at the same time outlawing the sale of land, the contractual mechanism that is best suited for managing property-rights relations among such individuals.<sup>227</sup>

The result is that the Land Use Act has increased transactional costs compared to the customary system. No longer can individuals and groups rely on social norms to ensure compliance with property rights. Rather, individuals must rely on the state to define, monitor, and enforce these rights. Significantly, however, the Nigerian state often fails in this essential function:

In light of the pattern of violence in Plateau State over recent months, with each community seeking to avenge attacks by their opponents, the latest outbreak should have come as no surprise to federal and state authorities," said [Peter] Takirambudde\* . . . 'Yet the Nigerian government took no action to preempt the massacre. The government's neglect of the situation in Plateau over the last

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227. See generally COOTER, *supra* note 17, at 12.

three years has resulted in an endless cycle of revenge,' Takirambudde said. 'Not only have the police been unwilling or unable to stop the fighting, but the government has not taken responsibility for finding a lasting solution to the crisis.'<sup>228</sup>

\*Executive Director, Human Rights Watch's Africa Division

In Nigeria, the government is considered to be highly corrupt, and state officials often fail to enforce and protect property rights.<sup>229</sup> The judiciary is not considered to be impartial.<sup>230</sup> Because the public sector is so corrupt, individuals must rely more heavily on personal exchange and personal influence to accomplish their goals. Such reliance might be more problematic in Nigeria, because the Land Use Act superseded customary norms designed to smooth relations among individuals in dealings over land. No longer are village headmen, chiefs, or *obas* able to facilitate the incorporation of outsiders into the group or make land-use decisions based on their local knowledge. At the same time, people do not have reliable access to government decision makers. Thus, disputes over land allocation and land use issues may be left to individuals to resolve, and individuals may have to resort to violence to assert property claims.

With regard to land, the Land Use Act places primary responsibility for managing land-allocation decisions with state governors. Yet, as Transparency International's 2003 report on Nigeria states: "[A]lthough Nigeria is a federation of states, there has been virtually no independent, anti-corruption effort by any of the states or by local government."<sup>231</sup> This situation bodes especially ill for land issues.

Further, because they are viewed as corrupt, costly, distant, and less transparent, government courts might be less accessible to Nigerians than customary courts. Government courts are particularly difficult for the poor and less well educated to negotiate. In a 2004 report on judicial integrity in Nigeria, the United National Office on Drugs and Crimes says:

Significant differences were found regarding the experiences and perceptions of respondents with different socio-economic and demographic characteristics. In particular the less privileged, both in terms of monetary means and educational background as well as the ethnic minorities tended to have worse experiences and perceptions of the justice system . . . Further, the poor and uneducated were more

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228. Nigeria: Prevent Further Bloodshed in Plateau State, *supra* note 6.

229. See Abdullahi, *supra* note 21.

230. See U.N. Office on Drugs and Crime [UNODC], Global Program Against Corruption, *Assessment of Justice System Integrity and Capacity in three Nigerian States*, I(C)-D(5) (May 2004), [http://www.unodc.org/pdf/crime/corruption/Justice\\_Sector\\_Assessment\\_2004.pdf](http://www.unodc.org/pdf/crime/corruption/Justice_Sector_Assessment_2004.pdf) (assessing the state of the judiciary and Nigerian court system and discussing, among other issues, low levels of public trust in Nigeria's courts, a declining willingness on the part of citizens to use the courts, a concern over a lack of judicial independence, concerns over lengthy, slow and costly process, and concerns over corruption, especially among clerks of courts); see also Abdullahi, *supra* note 21, at 227.

231. Abdullahi, *supra* note 21, at 226.



likely to experience delays in justice delivery . . . women, the poor as well as ethnic minorities experienced and perceived lower quality of justice delivery . . . ethnic minorities as well as the poor tended to have less trust in judiciary.<sup>232</sup>

As individuals face increasing conflict over land, they fall victim to a system that exacts high costs for resolving land disputes. Indeed, the system might well be perceived as so costly that individuals resort to violence in order to lay effective *de facto* claims to land, an increasingly valuable resource.<sup>233</sup>

#### IV. CONCLUSION

At first glance the increased violence in Plateau State over property-rights allocations is puzzling. Why, in the home of “Peace and Tourism,” are thousands of people dying because of property disputes? The recognition that changing conditions, both exogenous and endogenous, create incentives that perhaps lead people to resort to violence rather than peaceful trade helps to piece this puzzle together. A growing and increasingly heterogeneous population is demanding access to ever scarcer land. This rising demand raises land values. It is more costly for the citizens of Plateau to peacefully trade these land rights because of the increased transactional costs associated with greater heterogeneity and with the institutional process created by the Land Use Act. These problems, coupled with tenure insecurity and poor enforcement of rights, lead to fewer instances of peaceful trading and to increased violence.

The Land Use Act significantly restricts individuals’ ability to trade property rights. Even if peaceful trade does take place, as it no doubt does, the risk remains that such rights might be taken by predatory private or public action, resulting in increased tenure insecurity. Not only is tenure becoming increasingly insecure in Plateau, the state government is failing to enforce rights and to manage violence associated with violations.

The result is that the Land Use Act has blocked legal evolution that would normally allow for greater individualization of tenure rights in Plateau State. People cannot buy and sell land in a decentralized market place. They can only legally acquire and transfer rights through a deeply corrupt political process. As land in Plateau increases in value because of internal migrations and increasing population, citizens face extremely costly processes for establishing rights in land. This author suggests that these

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232. UNODC, *supra* note 230, at IV(A).

233. See Anderson & McChesney *supra* note 25, at 49–50.

high costs force individuals to forego the process established by the Land Use Act, opting instead to establish rights by private force. Unless and until the incentive structure for the transfer of land rights in Plateau (and throughout Nigeria) is changed to promote peaceful transfer over violence, the problems of Yelwa and Jos are likely to continue. Robert Cooter's advice is apt as Nigerian leaders ponder how to return peace to Plateau:

Central authorities should aim for the modest goals of removing obstacles to economic opportunity, rather than trying to dictate the pace and direction of development . . . . Uncertainty over property rights can only be removed through the evolution of customary law and the registration of customary boundaries.<sup>234</sup>

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234. COOTER, *supra* note 17, at 7.