EXAMINATION OF SOME LAND LEGISLATION IN NIGERIA AND THE OWNERSHIP RIGHTS CONUNDRUM

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Abstract

Land ownership, before the received English property model was customarily communal. But, after the Cession Treaty of 1861, and the eventual spread of British influence, the control and management of all lands became a legislative issue. The Public Lands Act, 1903, the Land Tenure Law, 1962, the Minerals Act, 1914 and later, the Minerals Act, 1945 (mutatis mutandis), and now, the Petroleum Industry Act, 2021, and the Land Use Act, 1978, all vest the ownership of immovable property (land) in the Government of the Federation. Land property rights was entrenched in the 1963 Republican Constitution for the first time, same as it is extant under sections 43 and 44(1) of the 1999 constitution. But those provisions are textually subservient to the limitations under section 44(3) of the same instrument, hence the problems of property ownership. This article critically examines some of the land legislations, as they affect property ownership rights under the constitution. This article shall trawl through some relevant statutes, case-law and the opinion of erudite publicists in critically examining the extent of land ownership rights.

Keywords: *Nigerian Legislations, Ownership, Aacquisition, Land Rights, Uses, Trusteeship.*

1.1 Introduction

Land ownership pre-dates the geographic description called, "Nigeria". Land ownership in the British West African colonies was traceable to the communal and/or family unit as opposed to individual ownership,[3] though an explanation in the village or community contexts necessitates an explanation of the origin of the community itself.[4] In the case, ***Owoyin v Omotosho***,[5] customary practices of this kind was described as 'a mirror of accepted usage'. Customary land law in the Northern[6] and Southern Nigeria[7] respectively summarised the complexities and pluralities that Nigeria broadly represented. But, with the growth of

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3. T O Elias, Nigerian Land Law (4thedn, London: Sweet and Maxwell 1971) 7, Also see a broader analysis with emphasis on "family" ownership @ p.74.
4 B O Nwabueze, Nigerian Land Law (Enugu: Nwamife Publishers Limited Nigeria 1982) 33.
5.(1961) 1 All NLR 304; Kimdey&Ors v Military Governor of Gongola State &Ors (1988) 2 NWLR (Pt.77) 445, See Historical Evolution of Land Law in Nigeria, accessed on-line @ https://legalemperors.blogspot.com on the 12/10/2022 @ 14:11 pm.
6 "Customary land law" was defined by public ownership.
7 "Customary land law" was defined by communal or family ownership.

British influence land became a matter of policy and legislation.[8] Historically, communal ownership of land was radically introduced by the Cession Treaty of 1861 signed between the representatives of Her Majesty, the Queen of England and King Docemo. The ambition of the British Empire could be gleaned from Article 1 of the Treaty of Cession of Lagos, thus:

> "I, Docemo, do, with the consent and advice of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors for ever, the Port and Island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging…"[9]

By the above Treaty all and the entire territory of Lagos and its environs was ceded by Docemo to the Sovereign of Great Britain. However, the plenitude of such cession was interpreted in the case, ***Amodu Tijani v Secretary, Southern Nigeria***,[10]wherein, Viscount Haldane held:

> No doubt there was a cession to the British Crown, along withthe Sovereign, of the radical *or ultimate* title to the land, in the new Colony, but this cession appears to have been made on the footing that the rights of property of the inhabitants were to be fully respected…The general words of the cession are construed as having related primarily to sovereign rights only. Where the cession passed any proprietary rights they were rights which the ceding King possessed beneficially and free from usufructuary qualification of his subjects.

Thus, by the Treaty, Docemo was portrayed to have ceded with the consent of his subjects, but, it was held that Docemo did not own Lagos at the time of the Treaty and could not have signed away all land and Territory of Lagos. The court's constructionist adjudicative opinion that private property was not part of the cession laid the foundation for private property policy. Every land policy had an accompanying legislation. Accordingly, there was the Land Native Rights Ordinance of 1918, and notably, the Land Tenure Law of 1962, which was the precursor to post-independence Nigeria land policy and legislation.

The Republican Constitution of 1963 was the first domestic instrument on property acquisition and ownership rights.[11] It provided qualifications as to payment of compensation, and access to the determination of the value of compensation to the occupiers.[12] Similarly,

[8] Elias (n3).
[9] *Ibid* (n5) 8.
[10] (1921) 3 N L R 21
[11] Section 31.
[12] Section 31(1)(a).

land ownership provisions were made under the 1979 Constitution[13] and retained under the 1999 Constitution[14], particularly, under section 44(1) thereof. Incidentally, one of the aftermaths of the 1966 *coup d'etat*'[15]was the promulgation of the Land Use Act, 1978 purposed to drive government's policy of control and management of land. This further increased the debates as to the definite extent of land ownership rights, hence the conundrum.

Statement of the Problem

Land acquisition and ownership rights are adjunct textual provisions under the Nigerian Constitution, 1999 (as amended), albeit some clear inhibitions. Nigerian statutes, like the Land Use Act, 1978 further limits property interests to mere "use and occupation". And, these exclusionary instruments and limitations on land ownership rights, has created a continuing conundrum as to the extent of these guarantees. This article critically reconsiders the expropriation character of the Land Use Act,[16] and also critically reasons with Fekumo, Smith, James, Otuama, et al on the effects of the Land Use Act on title-holding interests, which leads to further hypothesises. This article will inquire as to whether or not the land-ownership rights (as fundamental rights) under the constitution could be overridden by the nationalization policy and legislation under the Land Use Act.

This article is structured into five parts, firstly, the introductory section. The second segment examines some colonial era legislations on land ownership rights, while the third segment examines some indigenous [Nigerian] legislations on land ownership, use and acquisition. The fourth, inquires into the legal efficacy of land ownership rights provisions vis-a-vis the property rights inhibition instruments. The fifth section closes the discourse in a summary-type conclusion, with possible policy reform suggestions.

II. Some Legal (Colonial Era) Instruments on Land Ownership in Nigeria

Land policy and legislation always seem to have an effortless tangling effect, institutionally, to eke socio-political unification through law for national development. Some of the land policy legislations were-Public Lands Ordinance, 1876, followed with the Native Lands Acquisition Proclamation, 1900, which was later re-legislated under the name, Public Lands Acquisition, 1917.Others were-The Land and Native Rights Ordinance, 1910, Oil and Minerals Act, 1914, Land and Native Ordinance of 1916,Land Acquisition Ordinance,1917, Public Land Acquisition Act of 1956, Petroleum Profits Tax Act, 1958.Some of these instruments has been overridden by the Petroleum Industry Act, 2021.

[13] Section 40.
[14] Sections 43 and 44(1) of the Constitution.
[15] Generally tagged a 'usurper' regime that overthrew the first Parliamentary experiment by a coup d'etre in 1966.
[16] Elias (n3) 7.

The Mineral Ordinance of 1914

This instrument relevantly brought significant changes, part of which whittled British hegemony in order to accommodate indigenous participants, except for the key directorship positions. Section 3 of the Mineral Oils Ordinance of 1914, passed a prohibition in strong terms making it unlawful to search, drill or engage in any such venture, except by a properly approved license or lease.[17]

The Land Native Rights Act, 1918 showed the true policy intent and purpose of the Colonial Government. Section 3, provided:

> all lands, and all rights over same, are hereby declared to be under the control and subject to disposition by the Governor and to shall be held and administered for the use and common benefit of the natives of Northern Nigeria; and no title to the occupation and use of such lands shall be valid without the consent of the Governor, and under section 4, "the Governor in the exercise of the powers conferred upon him by this Proclamation shall have regard to the native laws and customs existing in the district in which such law is situated.

Pertinent reforms was effected in the East and Mid-West, with the consequent Native Lands Acquisition Law of 1917, which inhibited the transfer of land to aliens by natives of the South. Lands received by an alien without the Governor's written approval had no effect whatsoever under section 3(b).[18]And, any vesting of title on aliens without the prior approval of the Governor (or his delegate) attracted punishment by fine or both imprisonment and fine.[19]This policy legislation suffered criticisms and was replaced with the Acquisition of Lands by Aliens Law, 1956 in the Eastern States.

In the South, under the aegis of the Royal Niger Company, land policy was different. By virtue of sections 2 and 4 of the Niger Lands Transfer Act (N0.2 of 1916), 'all lands and rights within the Southern Provinces of the Protectorate belonging to the Niger Company Limited…on 1, January, 1900…shall be and hereby vested as from 1, January, 1900, vests in the Governor in trust for Her Majesty'; and section 3, … that certain pieces of land and certain rights appurtenant thereto which were mentioned in certain collateral agreements shall remain vested in the Company" as from January 1,1900.These include the Company's trading posts as well as minerals.[20] The policy was clearly ambivalent in intending a fee simple interest by the Act, yet, there was rights to use and enjoyment under local law and custom.[21]

[17] N Awuka, "The Oil Prospecting Licenses (Conversion to Oil Mining Leases,et al) Act", is presently the instrument regulating the conversion of licenses or leases accessed on-line @ https://www.academia.edu>Examin…,https://.liste.org>article>view. on the 19/11/2022 @ 19:20 pm.
[18] Elias (n3) 29.
[19] *Ibid* (n3) 30.
[20] *Ibid.*
[21] Elias (n3) 28.

The land policy in the case of Benin was different, whose Oba was re-instated with total control over his domain. The Crown had distinct treaties with the different independent States, while reserving the authority to appoint Commissioners.

Elias writes further that this difference between North and South 'reflects the tyranny of the persistent communist error which consist in the idea that whereas Southern Nigeria were in effective local occupation at the time of the British advent…acquired by voluntary cessions, lands belonged to emirs into whose shoes the British Crown considered itself to have stepped by mere right of conquest.'[22]

Lord Fredrick Lugard, a colonial representative himself criticized the "control and management" policy for the reason that absolute power vested in the Governor, was tantamount to "expropriation", since they were inconsistent with the fundamental principle that "conquest or cession" should not affect private property.[23] The foregoing criticism informed the repeal, and replacement with the Land Tenure Law, 1962.

III. The Key Legislations On Land-Ownership, Acquisition And Rights Of Use During Post-Colonial era, to wit:

The Land Tenure Law of 1962 (No.25):

This was the first indigenous post-colonial legislation on Public ownership of lands in Northern Nigeria. By this instrument, the Minister for Lands was vested with power to control, hold and allocate both un-occupied and occupied native lands in Northern Nigeria. And, under this instrument, "non-natives" only got right of use by the approval of the Minister for Lands.

The Land Tenure Law of 1962 had a substantial feature of the Land Native Rights Ordinance of 1918. Under this instrument, all lands in each of the Northern States of Nigeria", occupied or unoccupied was declared native lands.[24] And under section 5 thereof, the control and disposition of all lands was referential to the Minister for Land Matters, who held them for the use and common benefit of the "natives", except the "non-natives", whose title was subject to the consent of the Minister for Lands. The terms, natives and non-natives referred to those, whose fathers were indigenous to Northern origin and the latter refers to those, whose fathers had no root of such traces.[25] This principle of land tenure had a qualification for occupation by title evidence, described as "the right of occupancy," referencing both Statutory Right of Occupancy and Customary Right of Occupancy in the nature of a Certificate duly issued at the instance of the Minister as a user rights permit.

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[22] (n3) 32 ", ..the arrogation of monarchical absolutism to the Northern emirs in the matter of land was the result of the error as to the actual position on the part of the early British administration has been born bye out by the minutes of evidence and the findings of the Northern Nigeria Lands Committee: Cd. 5103 of 1910…"(apologies to Elias, *ibid*…)

[23] Elias (n3), citing F D Lugard, Political Memorandum (1918) 348; Sir W Geary, Nigeria under British rule, p.266.

[24] Ibid.

[25] Ibid.

The 1963 Constitution was a pioneer instrument on property rights, with the entrenchment of clause prohibiting forceful possession and compulsory acquisition of private property, thus:

> No property, movable or immovable,[26] shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that:" (a) requires the payment of adequate compensation therefore; and (b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and in that part of Nigeria.[27]

There was a statutory explanation to the substantive provision to the effect that nothing in this section shall construe as affecting any general law for the imposition or enforcement of any tax, rate or due, penalties…forfeitures for breach of the law, relating to lease….[28]The same Constitution provided a statutory cushioning effect to circumstances of infringement- 'The provisions of this section shall apply in relation to the compulsory taking of possession of property, movable or immovable , and the compulsory acquisition of rights over and interests in such property by or on behalf of the State.'[29]

Despite the euphoria, the Republican experiment was truncated as a result of the 1966 *coup d'etat*, particularly, by Decree No.1 of 1966, Schedule 1.[30]One such result of the power 'usurpation' was the promulgation of the Land Use Act, 1978.

The Land Use Act, 1979[31] is assessed as the most debated instrument in the history of Nigeria, since independence,[32] and its impact in the alteration and diminution of citizens'

[26] Reference to "movable" and "immovable" property carries a bifurcated context as "chattel real" and "land".
[27] Section 31 of the 1963 Constitution (No 20)
[28] Section 31(3)(a-c)
[29] *Section* 31(4)
[30] The Constitution (Suspension and Modification) Decree No.28).
[31] Promulgated as a Military Decree No.6 of 1978 and metamorphosed thereon into a full-fledged "Act" in 1979. The "Act" is saved and preserved under section 315(1),(5) &(6) of the CFRN, 1999 (supra). See further, Taiwo, A, (n-…), p.7. Ditto, Part III, Second Schedule [Supplemental and Interpretation (supra), especially, items 1, 2(c) thereof makes matters of "**the acquisition and tenure of land**", et al, "concurrent matters of legislative competence".
[32] See, especially, the "preamble" and sections 1 and 2 of "the Act". Some authors credit it as the most "revolutionary" instrument to which I take with a pinch of salt, especially with regards the "Kelsenite" principle.The reference to a "revolution" came as an afterthought in view of the decisions in the cases of *Boro VThe Republic* (1969)1 NMLR 163; and *Council of University of IbadanV Ademolokun* (1967), 1 All NLR 213, as a result of which the Federal Military Government smartly sought a pleasant nomenclature vide Decree N0.28 of May 9, 1970 (Supremacy and Enforcement of Powers). But, in *Lakanmi v AG; WesternNigeria* (1971) 1 U.I.L.R 201, the court was unwavering enough to refuse the description of "revolutionary legality" as there was really no revolution and that the 1963 Constitution was still in force. Therefore, it would be out of context to describe the Land Use Act as any instrument of that description, since the Decree that brought it was dependent

ownership rights to a mere land-holding one of use and occupation, has ignited concerns as to the definition of the extent of such interest. Under the banner of nationalization policy, the preamble to the Act, summarily heralds the intent as follows:

> An Act to vest all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments."[Circa, 29th March, 1978. See Cap L5; LFN, 2004, wherein sections 1 and 2(1)(a), LUA, substantively reiterates the policy and intent of the "Act" and the commencement.]

This policy clearly intend to divest pristine interests and vest same in the Governor of each State of the Federation and the Local Governments, thus**:** 'Subject to the provisions of this Act, all land in the territory of each state in the Federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.'[33]

The 1979 Constitution prohibited forceful possession and compulsory acquisition of immovable property,[34] except in accordance with the qualifications under the subsection.[35] Akande writes that this section insists on the payment of adequate compensation.[36]

Dissimilarly, section 40(3) of the Constitution is a dominant clause to section 40 (supra) to the effect that the entire property in and control of all mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly."

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upon another Decree that was inferior to the 1963 Constitution. The LUA, was only probably a coup d'etat on property rights, but certainly not of any more pleasant nomenclature.

[33] Land Use Act, 1978 s1.

[34] s40.

[35] *Ibid*, (a) the prompt payment of compensation, and (b) right of access to the courts for the determination of the person's interest.

[36] J O Akande, *Introduction to the Nigerian Constitution* (Sweet & Maxwell1982) 40.

And under the 1999 Constitution, there was a subordinate[37] provision thus: "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.[38]"

The 1999 Constitution prohibits that:

> no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner andfor the purposes prescribed by a law that, among other things-(a) requires the prompt payment of compensation therefore; and (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria..[39]

Yet, there is a dominant provision to the effect that**:**

> Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.[40]

Thus *sections* 43 and 44(1) of the Constitution textually exist as subordinate property rights clauses on one hand, and as a prohibitory fortress from "forceful possession and compulsory acquisition of property" on the other hand, except by the qualifications under subsections (a) and (b), thereof.[41] Literally, there is no doubt that section 44(3), with the word, "entire"property … "in"… "on"… "upon", constitutes impediment to the provisions of section 43 of the Constitution, in addition to the subordinative clause "subject to…" In other words, it imports that the beneficiary of that section "shall have the right to acquire and ownimmovable property [land] subject to the exclusionary clauses under section 44(3) of the Constitution, which are-"minerals" or "mineral oils", "gas" and "petroleum". It may also implicate the subordination of property rights under the provisions of the Constitution on

[37] Probably ambiguously to section 44(3), in relation to the excluded items under the major sectors of the economy, i.e, "minerals", "mineral oils", "gas", "petroleum", and some uncertain solid minerals not certainly listed. Probably the LUA, vide *the provisions of 315 (1)(d), in a matter of land tenure and acquisition.*
[38] *s* 43.
[39] s44(1).
[40] s44(3).See *A.G Federation v A.GAbia State* (2002) 6 NWLR Pt 764, SC;
[41] *Ibid.*

matters of land tenure and acquisition, thus beyond mere legislative inelegance, tantamount to substantial conundrum on ownership rights.

The Petroleum Act, 1969, provided for "good oil practices", and vested the ownership of, and all on-shore revenue from petroleum resources in the Federal Government. The Petroleum Act, 1969, with particular reference to Regulation 1 relevantly affects the rights of the land owner, by the exclusion of "mineral oils", and whose improvements and other appurtenances are part of the environment impacted adversely by the seismic effects of the activity. This was also an inhibition on property rights.

The Mineral Ordinance of 1914, The Oil Prospecting Licenses (Conversion to Oil Mining leases, et al) Act

This instrument brought significant changes, part of which whittled British hegemony to accommodate indigenous participants, except for the key directing positions. The Mineral Oils Ordinance of 1914, passed a prohibition in strong terms making it unlawful to search, drill or engage in any such venture, except by a properly approved license or lease.[42]

The Nigerian National Petroleum Corporation Act, (Amendment Bill, 2021, i.e, The NNPC Act)), which vests in the corporation the power to represent and hold Nigeria's franchise in the Joint Venture operations.

The Environmental Impact Assessment Act, 1992.

This Act started firstly, with a preliminary nomenclature, the Environmental Impact Assessment Decree and got substantiated to a full-fledged Act in 1992. This Act provides for the carrying out of feasibility studies prior to the commencement of any activity that "may" likely or to a significant extent affect the environment or have environmental effect… The Act, has faced enormous criticisms for its terribly inelegant drafting,[43]which was characteristic of military-style law-making.

Nigerian Oil and Gas Industry Content Development Act, 2010 No.2 (NOGICD)

The Nigerian Oil and Gas Industry Content Development Act, 2010 is vested with the mandate; " to provide for the development of Nigerian Content in the Nigerian Oil and Gas

[42] See *section* 3 thereof, cited by Ikpeze (n6) The Oil Prospecting Licenses (Conversion to Oil Mining leases,et al) Act, is presently the instrument regulating the conversion of licenses or leases.
[43] O Oluduro, "Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities" (2014) Internesia, 155.

Industry, Nigerian Content Plan, Supervision, Coordination, Monitoring and implementation of Nigerian Content, and for related matters.

The Act also provides that there shall be exclusive consideration to Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry for contracts and services contained in the Schedule to this Act.[44]"

The Petroleum Industry Act, 2021

This is titled as AN ACT TO PROVIDE legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the development of the Nigerian petroleum industry, the development of host communities, et al. The Act provides that the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and Exclusive Economic Zone is vested in the Government of the Federation of Nigeria**.**[45]" This Act is new, but criticized for being old challenges clad in new costumes,[46]as though, they were legal fool proof to a novel and effective regime.[47]

Section 18 of the Interpretation Act-**"**Land includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals.**"**Construing the various exclusionary provisions (which inhibit land ownership rights) along with the provisions of the Land Use Act, there is some structural and/or dimensional distortion to the universal concept of land as a three dimensional non-destructible area. Also, in terms of concept, property rights and its legal extent smacks of a conundrum.

IV. The Main Discussion

What is the legal extent of land ownership rights of a subject under the constitution in relation to the rights of acquisition and land use under Nigerian Law? The crux of the discourse at this segment inquires into the legal extent of land-ownership rights under the Nigerian Constitution with regards to the express stipulations of the Land Use Act, 1978. There is a definitional crisis as to the nature and extent of land or property ownership rights, which

[44] s3(2).
[45] s1
[46] N Awuka, "Nigeria's Petroleum Industry Act,: Addressing old problems, creating new ones", www.brookings.edu, accessed on-line on the 26/09/22 @ 12.49 pm.
[47] Emphasis supplied by me.

debate has attracted a density of academic and judicial interests. The definitional problems are in part caused by the crisis of identification of the concept land. Before colonialism, there was the customary concept of land ownership based on the "*usufructuary*" subsistence model. It was so until the Cession of Lagos and its environs to the British in1861, hence the era of policy legislations and the problems of land ownership.[48]

This brought about the unfamiliar mix between customary practice and the received system. Elias writes that the intrusion of mere analogies of English property jurisprudence left the radical title in the British sovereign and created a lot of problems for ownership.[49] In the case of ***Amodu Tijani***,[50] the Judicial Committee of the Privy Council, per Viscount Haldane very guardedly stated that:

> "…there is throughout the Empire no such division between property and possession as English lawyers…are familiar with…a very usual form of native title is that of a usufructuary right, which is a mere qualification of or burden on the radical title of the Sovereign where that exists. In such cases the title of the Sovereign is a pure legal estate, to which beneficial rights may or may not be attached. But this estate is qualified by a right of beneficial user which may not assume definite forms analogous to estates, or where it has assumed these, have derived them from the intrusions of the mere analogy of English jurisprudence. As the result of cession to the Crown by former potentes, the radical title isnow in the British. But, that right is throughout qualified by the usufructuary rights of communities, rights which, as the outcome of deliberate policy, have been respected and recognised."[51]

It was further held that the "cession did not pass proprietary rights as they were rights beneficially accruing to the King and free from usufructuary qualification of his title in favour of his subjects…"[52] On the premise of the ***Amodu Tijani's*** case, the principles of proof of title interests to land was enunciated. What then is the nature of land under Nigerian law?

Utuama, Taiwo and Smith describe land as the earth's surface, subsoil, the air space above it, as well as things permanently attached to it.[53]Nwabueze writes that land is beyond the ground and its subsoil, but also includes all structures and objects, like buildings and trees standing

[48]Awuka (n46).
[49]*Ibid.*
[50]*Ibid.*
[51] Elias (n3) 12.
[52]*Ibid* (n33) 9
[53]*Ibid.*

on it.[54] Taiwo adds that land includes the soil beneath the surface and the right to the air space above the surface; buildings and any chattels which have by sufficient attachment to the soil or to the buildings, becomes fixtures; natural crops (*fructus naturalles*), but not industrial crops (*fructus naturales*).[55]

Presently, Nigerian land law is a metamorphic development of the received English model, which is wrapped in the words and meaning of the maxim, "quic quid plantatur solo solocedit", meaning "whatever that is affixed or attached to the land belongs to the land owner". Ownership under customary law was absolute. Under the received English system, however, the term is limited to a seisin, which is approximate to user rights as opposed to the *allodia*l.[56] Professor Smith writes, citing ***NEPA v Amusan***[57] that the maxim is subject to limitations by- (i) the consent of parties to a contract agreeing to waive it; (ii) by the express provisions of a statute, and (iii) under the doctrines of equity, the right of exclusive use of property.[58]

The Black's Law Dictionary[59] defines ownership as the collection of rights allowing one to use and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and inheritable.

Utuama writes further that at law, land is not capable of ownership…and that the subject of ownership consists of some rights to use and enjoy the land to the exclusion of other persons which is recognized and protected by law.[60] But Nwabueze espouses that ownership is the most comprehensive and complete relation that can exist in respect of anything. It implies the fullest amplitude of rights of enjoyment, management and disposal over property…that the owner's title to these rights is superior and paramount over any other rights that may exist in land in favour of other persons; in negative language his rights to the enjoyment, management and disposal of the thing must not be dependent upon, or subordinate to that of any other person.[61]

[54]Nwabueze (n4).
[55] The terms "*fructus naturalles*" , mean natural products of the soil (grass, timber, fruits from fruit trees) and *fructus industrialles*, which means such crops as corn and potatoes, which need manual labour. See Taiwo, A, *ibid*, p.13.
[56] "fee simple", "radical", et al
[57] (1976) LCN/2177 (SC) Case Number 398/1975
[58] I O Smith, *Practical Approach to Law of Real Propertyin Nigeria* (Rev edn, Ecowatch Publication2013) 16-18.
[59]*Ibid*, 1131.
[60] A Taiwo, *The Nigerian Land Law* (Princeton and Associates Publishing Coy Ltd 2016) 17.
[61] Ibid (n36) 18.

Niki Tobi outlines the incidents of ownership as follows- (i) the power of enjoyment, (ii) the right to exclusive possession, (iii) power to alienate *inter vivos* or to charge as security *(iv)*power to leave by will (right to the residue. [62]

In ***Idundun v Okumagba,***[63] the five modes of proving title to ownership of land are, (i) proof of traditional history or traditional evidence, (ii) by production of title deed, (iii) proof of acts of ownership (such as selling, leasing, renting out or farming on all or part of the land extending over a sufficient length of time numerous and positive enough to warrant the inference of ownership, (iv) proof by acts of long possession and enjoyment of land, and (v) by proof of connected or adjacent land in circumstances rendering it probable that the owner of such adjacent land, could in addition, be the owner of the land in dispute.

Finally, ownership includes possession in most cases, but not all possession could pass for ownership, though, possession may lead to the presumption of ownership as could be gleaned from the case, ***Aghenghen v Waghareghor***.[64]

Firstly, a right is something that is due to a person by just claim; legal guarantee, or moral principles. It also means a power, privilege or immunity to a person by law; the right to dispose of one's estate; a legally enforceable claim that another will do or will not do agiven act.[65]Gerber espouses that "the substantive right is one thing, and having the rightto claim it is another."[66] Right could also mean a privilege, though, Glanville Williams (of Blessed Memory) preferred to refer to it as liberty. What then is the nature of land ownership rights under Nigerian law? Is it as guaranteed under the Constitution?, or as granted under the Land Use Act?

Under section 43 of the Constitution, a property right, is bi-axially provided- "to have the right to acquire and own immovable property…" This Constitution prohibits forceful possession and compulsory acquisition of property of subjects as follows:

> no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribedby a law that, among other things-(a) requires the

[62] *Abraham v Olorunfunmi* (1999) 1 NWLR (1650) 74-75 Per Niki Tobi JCA.
[63] (1976) NMLR 200, 210.
[64] (1974) 1 S C 1.
[65] B A Garner, *Black's Law Dictionary* (7th edn 1999) 1322.
[66] M D A Freeman, *Lloyd's Introduction to Jurisprudence* (8th edn, Sweet & Maxwell 2008) 394.

> prompt payment of compensation therefore; and (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria..[67]

But, section 44(3) of the Constitution, eminent[ly] dominates substantial spheres of the dimensional extents of land by textual inhibitions to sections 43 and 44(1), thus- the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed insuch manner as may be prescribed by the National Assembly." And, by section 1 of the Petroleum Industry Act (Objective and Application) Act, 2021, the property and ownership of petroleum within Nigeria and its Territorial Waters; Continental Shelf and Exclusive Economic Zone is vested in the Government of Federation of Nigeria. A fortiori, section 18 of the Interpretation Act,[68]"immovable property means land and land excludes minerals. The deliberate exercise of eminent domain over the control and ownership of minerals and petroleum by vesting of same in the Government of the Federation is part of the unsolved puzzles [problems] of ownership.

So, to what legal extent or plenitude may a subject claim to have the right to acquire and own immovable property under *section* 43 of Chapter IV of the Constitution? and what is the intent of the words…subject to the provisions of the Constitution? In view of these statutes, land property ownership appears to have been desperately bizarrely distorted through legislation from the three-dimensional area description, to an infinitesimally denatured uncertain mass controlled and managed across limitless prepositional extents… "the entire property" "in","under", "upon"…minerals", "mineral oil", "gas", etc, are vested in the Government of the Federation. Each of the provisions has a statutory exclusionary limitation on the purportedly guaranteed right, thus leaving only a bare title and consequently, hindering the full effect of the "*quic quid plantatur solo solocedit"* under Nigerian law.

Therefore, a subject shall have the right to acquire andown immovable property, in the disjunctive and conjunctive exercise of it,[69] for acquisition rights are adjuncts to ownership

[67]s.44(1).
[68]The Schedules, Cap IA, LFN, 2004.
[69] G C Thornton, *Legislative Drafting* (Tottel Publishing 2006) 96-97, wherein the erudite author gave three examples with the use of "and" in a legislative text as follows; "There are numerous cases in the law reports in which, against all odds, courts have been urged to construe 'and' disjunctively and conjunctively, citing *Re H*

rights subject to, and under the Constitution. Thornton writes that the use of subject to in drafting miscellaneous words and expressions are required sparingly and with caution, except when intended to convey legal rights in respect of a subservient clause.[70] And a common mistake is to use one or both "subject to" and "notwithstanding" together without one doing violence to the other, then such use would be fuddle users. Subject to is frequently used incorrectly when what was meant is in "accordance with". Even if there is an apparent inconsistency, the context may be such that it is quite clear which provision is to prevail over the other and there may be no need to use subject to or notwithstanding. Careless use of subject to may produce ambiguity.[71] Why then should the State purpose to limit the proprietary rights of subjects after all?

Bruce and Others seemed to have volunteered a response when he wrote that land and property rights have deep, emotive social and cultural significance in the societies of many developing countries because control of land is the basis of political and state power.[72] It was upon the stated reasons that land policy was conceived as an inhibiting instruments of control and management.

Thus the insertion of the subservient clause in *section* 43 are deliberately individually and conjunctively intended to subordinate the said rights to the dominant provisions in *section* 44(3). How may the ownership rights of a subject under *section* 43 of the Constitution (being a fundamental rights provision) be subject to the provisions of the same Constitution?

Firstly, the constitution did not clearly adjectivally prescribe how to acquire proprietary interests? The Constitution merely provides both right to acquire, albeit with subordinative effect to the provisions of the Constitution, without prescribing procedural means to that end. Garner writes that acquired rights are always in the nature of exchange for a consideration.[73]Ikpeze writes that in Nigeria the right to participate in oil exploration and

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[*aminor*] (1994) 1 All ER 812. The author gave an example-(1) 'A and B may do X(2) A or B may do X. Example 1 conveys three possible meanings-(i) A and B jointly may do X (ii) A may do X, B may do X or both A and B may do X. (3) The single concept of A and B may do (for example, if A =civil servant and B=doctor who is a civil servant may do X).A fortiori, by section 14 (b) of the Interpretation Act, Cap 123 IA…LFN, 2004, "every person" is tantamount to "persons", because, words in the singular include the plural and words in the plural include the singular and to both juristic and corporate aggregates for the "singular" includes the "plural".

[70] G C Thornton, *Legislative Drafting* (4th edn,Tottel Publishing 2008) 102.

[71] (n27).

[72] The World Bank: *Land Law Reform: Law, Justice and DevelopmentSeries* (The International Bank for Reconstruction and Development 2006) 3.

[73]Ikpeze (n7) 2.

exploitation can only be acquired and not owned.[74] A private person has right under the Constitution to acquire immovable property, but in the exercise of those particular rights, should there arise matters, which requires the qualification of the parties in contract or allied fields, the relevant laws on capacities[75]to that effect shall applyaccordingly. For individually acquired rights, the *habendum* clause of the transfer document states the estate or quantity of interest to be granted, for example the term of a lease or grant.[76] The question now is at what stage does the person's liberty to have the right to acquire begins? Is it subject to the provisions of the Constitution and if so, what is the procedure to physically seised of an accruing right? Or is it after the purchase contract?

To have the right to acquire public property subject to *section* 44(3) of the Constitution minerals, mineral oils, gas and petrol, an applicant or subscriber intending to participate in the major sectors of the economy as expatriate forces of globalization[77] must diligently search the Corporate Affairs Commission and Immigration and Customs check-lists for compliance as preconditions for registration by the Minister of Petroleum. The Oil Mining Lease (OML), Oil Prospecting License (OPL) and Oil Exploration License[78]are the different acquisitions. Mining licences are also granted by the Governor of each of the states under *section* 12 of the LUA. The tenure of this right is relatively defined by the terms of engagement, which may range from geological investigative survey, drilling, production and de-commissioning.

The Land Use Act and Land Property Ownership Rights Under the Constitution

The Land Use Act, 1978 has cast further substantial doubts on ownership rights. The policy and purpose is digestible from *sections* 1 and 2 of the Land Use Act, which vests all land comprised in the territory of each state in the Federation …in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act. Construed in conjunction with

[74] *Ibid.*
[75] That is-"Vitiating elements"-(i) "infants", except for "necessaries". Could "land" be viewed as a "necessary" to an infant, given the fact that from land comes food and shelter? That is a conundrum, indeed. Under section 7, LUA, prohibits the Governor from granting a Statutory Right of Occupancy or consent to the assignment or subletting …to a person under the age of twenty one years, except-(a) on an appointed trustee of guardian, and (b) by devolution, in which case, the incidental liabilities and obligations appurtenant to that title passes along with it.The question is- 'is a 21 year old person, an "infant" in the normal law of contract (ii) Lunatics (illiterates and drunken persons (iii) Corporations having *intra vires* objectives to which this nature of business is legal, etc, etc. See Achike, *Nigerian Law of Contract* (1973) (Nwamife Publishers Limited), pp. 115-134. See M C Kucchal, *Mercantile Law*, (6thedn, Vikars Publishing House PVT LTD 2005).52.
[76] B A Garner, *Black's Law Dictionary* (7thedn West Group 1999) 716.
[77] As Multi-national Corporations or Trans-national Corporations.
[78] Mineral Oil Act 1914, et al.

sections 2, 5, 6 thereof the effect is that "all land" in urban areas are under the control and management of the Governor of each State of the Federation, while "all land" located in "non-urban" areas are under the control and management of the Local Government Authority. Thus, the textual composition of the Land Use Act, has continued to engender conflicting interpretations.

In the case, ***Nkwocha v Governor of Anambra State***,[79] wherein, the Supreme Court per Irekefe, JSC, (as he then was) described it as "the most impactful of all legislations touching upon the land tenurial system of this country before and after full nationhood". It was also decided that the relationship between the Governor and the people could be likened to one between a trust-owner and beneficiary. Yet under sections 9, 12 and 14 of the LUA absolute relations to property use and occupation are subject to the Governor as the alter ego of the eminent domain. Sections 21 and 22 also prohibits the alienation of Customary Rights of Occupancy and Statutory Rights of Occupancy and in the absence of the Governor's consent, such transfer is void.

Butin Solanke v Abed & Anor,[80] it was held that the alienation of land without the consent of the Minister rendered the transaction void and not illegal; and that the landlord was precluded in equity to benefit from his own wrong by insisting that the transaction was unenforceable.

What is the Effect on Customary Land Tenure?

Under section 43 of the Constitution, the word, every person means that there is no distinction between a subject of customary law and any other, those distinctions are creations of the LUA, to achieve administrative convenience. By section 5(1) of the LUA read together with section 1 thereof, the effect is that all existing rights to the use and occupation of the land, which is the subject of the statutory right of occupancy shall be extinguished.

Omotola and Fekumo questioned whether the LUA expropriates, with the latter raising the convoluted inquiry, thus, what is the legal effect of the Land Use Act, 1978 on the title of owners of land who held absolute or freehold prior to the 29th March, 1978, when the Act came into law? Citing section 1 of the Act, the erudite scholar submitted that, with the word vested, all lands of citizens have been deprived and same vested in theGovernors.

[79] (1984) 6 S.C 362-363.
[80] (1962) NRNLR 92.

First, the above poser has the effect of inverting the grundnorm[81] in Nigeria, which is the Constitution in any given circumstance as though, it is inferior and deducible from the Land Use Act. Land policy and legislation entanglement has created tremendous problems for not only ownership but for legal thinking. But expropriation could mean a government taking or modification of an individual's property rights, especially by eminent domain.[82] Notwithstanding, the literal meaning of expropriation, there has continued to be a division amongst judicial and juristic minds on the implications of the Land Use Act. And in ***Abioye v Yakubu***,[83] the Supreme Court denied that the Land Use Act expropriates private property.

Notwithstanding policy and legislations entanglement, the effect of the LUA should be seen more in terms of legal reality than artful semantics. Literal interpretation of the provisions of the LUA should not be with recourse to policy for the employment of both literal and purposive canons in construing conflicts with fundamental rights provisions would dangerously lead to unintended results capable of further inhibiting the actual guarantee of property rights. By s*ections 1,2,5,6,21,22,24 and 28 of the LUA***,** there is the vesting of all land in the Government of each state for control and management. Therefore, there is the modifying of subjects' interest to mere use and occupation, which no doubt suffices as expropriation. The implications of *sections* 5 and 6 of the Land Use Act, are that a subject can only be entitled to a land-holding interest or be in occupation with the Governor's approval *vide* a certificate of Statutory Right of Occupancy[84] or Customary Right of Occupancy[85]as evidence of such grant. Thus, not even the payment of compensation upon the acquisition of private property for overriding public purpose[86] is reason enough to justify the denial of the expropriatory character of the LUA. In *A-G,* ***Bendel State v Aideyan,***[87] it was judicially settled law that expropriatory statutes which encroach on a person's proprietary rights must be construed *fortissime contraproferentes*, that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived.

The Land Use Act was entrenched into the 1979 Constitution by virtue of *section* 274. And, by *section* 315, paragraph (b) as an existing law[88] and listed under *subsection* (5), paragraph

[81] *section* 1(1)[Supremacy of the Constitution], which provides-'This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria, and by subsection (3) of [it], "if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void'. This section closes the debate about whether or not the Constitution or the LUA is the "**grundnorm**" in land jurisprudence.
[82] Garner (n76) 602.
[83] (1991) 5 NWLR (Pt.190) 130, 254-255,
[84] Subject to LUA, s1 issuable by the State Governor..
[85] Subject to LUA, s2 issuable at the instance of the Local Government Area, where the land is situate.
[86] LUA, s28.
[87] [1989] 4 NWLR (pt 188) 672.
[88] *Ibid* (b) "an existing law" means any law and includes any rule of law or any enactment or instrument whatsoever or instrument which which is in force immediately before the date when this section comes into

(d) of the 1999 Constitution. Despite this development, some scholars still conclude otherwise. Onabule writes, over the years, the constitutional clothing of the LUA, 1978 has raised a lot of controversies, because a strict interpretation of the provisions of the LUA and the provisions of the 1999 Constitution may present the Act as the grundnorm on landlaw over the Constitution. The LUA was meant to usher in a new land reform in Nigeria.[89]

The above conclusion, in our respectful view, is not absolutely tenable. Firstly, the 1999 Constitution declares self-assertively that this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria; and (ii) sub-section (3)-"if any other law is inconsistent with the provisions of this Constitution, this constitution shall prevail, and that other law shall to the extent of that inconsistency be void.[90]

The Constitution also asserts the duality of supremacy in addition to prevalence over any other inconsistent instrument with void consequences.[91]The grundnorm anywhere in the world is not a distributable term and there cannot be different grundnorms for different subject-matter legislations. In fact, the grundnorm is not some aggregate corporeal objects in a basket, but a 'top-bottom' order of norms. The LUA was one of the final legal instruments of the 1963 coup d'etat and has continued to feature as a relevant legislation. But, the attempt to upgrade the 'usurper' regime to a "revolution" was audaciously denied through court declaration, thus:

In ***Lakanmi & Anor v Attorney-General Western State & Ors,***[92] it was held that the 1963 Constitution remained the fundamental operative norm against which courts could measure acts of the Federal Military Government, although the court recognized that the extra-constitutional acts of the regime could be validated, on the ground of necessity, it found no necessity for limiting the jurisdiction or the passing of *ad hominem* decrees and held the

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force or which have been passed or made before that date comes into force after that date; and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of the Constitution and shall not be altered or repealed except in accordance with the provisions of *section* 9(2) of this Constitution. And, Part 1, Second Schedule, particularly, *subsection* 6 thereof; Without prejudice to *subsection* 5 of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect as Federal enactments and as if they related to matters included in the Exclusive Legislative list set out in Part 1 or this Second Schedule to this Constitution.

[89] O Onabuwa, "The Constitutional Sanctity of the Land Use Act", available on-line @ https://www.blog.lawrepository.com.ng>…, accessed on the 07/11/2022 @ 19:08 pm.

[90] *Section* 1(1).

[91] s1(1) (3).

[92] (1971)1 UILR 201.

decrees invalid… and in effect, the Constitution still remains the law of the country and all laws are subject to the Constitution excepting …the Constitution is amended by a Decree, this does not mean that the Constitution of the country ceased to effect as a supreme norm.

James writes that the Land Use Act creates no conflict and in fact, consistent with the statements of Fundamental Objectives and Directive Principles of State Policy in furtherance of the economic activities within the major sectors of the economy[93] under *section* 16 (1)(c)(4)(a) of Chapter II of the Constitution. *Section* 16(1) (c) provides:

Without prejudice to the right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy. And paragraph (d) of *section* 16(1) provides: without prejudice to the right of… to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

However, the provisions of the LUA clearly violates fundamental rights, [94] in other words, it resembles an obnoxious provision in the 1962 Land Tenure Law, which denies right of occupancy for persons of 21 years of age.[95] Such a person must subject to *subsections* (a) only benefit through a duly appointed guardian, and (b) subject of devolution upon death of a holder in which case, the person shall bear accompanying liabilities. Adjectivally, of the LUA infringing or like to infringe the fundamental rights provisions of the Constitution on proprietary rights immediately ignites the cause of action provisions of *section* 46(1) of the Constitution. Property rights grievances under Chapter IV of the Constitution vis-a-vis economic rights, *section* 16(1)(C) of Chapter II of the Constitution relevantly provokes the cause of action provisions of *section* 46(1) and (2) of Chapter IV of the Constitution.[96]

Section 46(1), provides that: any person who alleges that the provisions of this Chapter has been, is being and likely to be contravened in any state in relation to him may apply to a High Court in that state for redress. It is further provided under *section* 46(2) that subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and

[93] *(n 92)* 183, under s16(1)(4)(a) thereof, 'the reference to the "major sectors of the economy" shall be construed as a reference to such economic activities as may be, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation on the date immediately preceding the when the section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy.'
[94] *Ibid.*
[95] LUA, s7.
[96] Alternatively, with Order 2, rule 1 of the Fundamental Rights Enforcement Procedure Rules, 2009.

determine any application made to it in pursuance of this sections and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter.

In ***Archbishop Okogie v Attorney-General of Lagos State,***[97] in a matter of conflict between a human rights provisions of the 1979 Constitution and Chapter II, particularly, section 16(1)(C) of the Constitution on economic objective, the Court held that:

> "No provisions of Chapter II can override or inhibit the provisions of Chapter IV on Fundamental Rights. In particular, no legislation in implementing the provisions of section 16 can override the provisions of Fundamental Human Rights enshrined in Chapter IV of the Constitution."[98]

Also, in ***Selekowei Yelebe & Ors v AG; Bayelsa State & Ors,***[99]the Court of Appeal held that the forceful possession of property amounts to an illegality.

The implication from the Okogie's and Yelebe's decisions are that in all matters where the property (fundamental) rights of a subject is/are in conflict with economic policy objectives, overridden effects are declared in favour of the fundamental rights provisions at the expense of *section* 16(1)(c) of Chapter II of the Constitution. Therefore, the limitations deliberately calculated to whittle the efficacy of ownership rights under *section* 43 of the Constitution should, following the erudite view of Thornton, G.C rather be exercised in accordance with the provisions of the Constitution, and not subject to for the latter occasions substantial violence to ownership rights.

A fortiori, under the 1999 Constitution[100] the LUA has been incorporated into the former, thus further implying that it must be construed in accordance with the constitution, especially on issues of land ownership rights and any inconsistency could fatally void the provisions of the Land Use Act *pro tanto*. And, the difference is that the Constitution guarantees right of land-ownership, the LUA makes the citizen a mere land-holder reminiscent of centuries old primitive feudalism traditions. Ownership under Customary law also suffers from neo-legal

[97] [1981]2 NCLR
[98] Archbishop Okogie's case.
[99] Unreported Appeal No: CA/PH/144/2017. See also, *Agricultural Development Association, Obitti*, *Imo State v Okedi* (2004) 11 NWLR (Pt 884) 369 per IkongbeJCA 394-395; *NITEL PLC v RockonohProperty Coy Ltd* (1995) 2 NWLR (Pt. 378) 473; *Ladipo v Ajani* (1997) 8 NWLR (Pt.517) 356.
[100] *Ibid.*

imperialism. This has further occasioned unfathomable socio-economic problems, including palpable poverty and inter-ethnic crisis over access to grazing rights.

V. Conclusion

Sir Lord Lugard's observation that the conquest and cession policy to control and manage private property of natives was akin to expropriation[101] re-echoes. Elias' observation that the Cession Treaty of 1861 passed root of title to the British Crown, albeit no proper definition of the nature of that title[102] also resonates. Under the LUA, 1978, the vesting of all lands in the territory of each in the Governor as trust-owner for the benefit of all Nigerians is a re-legislation of the colonial policy. Though, there is a provision of land ownership rights under *section* 43 of the Constitution, same is subordinated to the provisions of *section* 44(3) of the Constitution, which wide exception and exclusions of "mines", "minerals", "gas" and "petroleum" "in", "on", "upon" and "under" any land in Nigeria or "in", "under" or "upon" territorial waters and the Exclusive Economic Zone of Nigeria…is tantamount to stupendous violence to the provisions on property rights. And the combined effects of the constitutional subjection by domination of property rights, coupled with the diminution of control and disposition rights to mere use and occupation subject to the Governor's power of control and management inevitably compels a re-phrasing of Elias' question,[103] thus: examining the vesting of all lands in the Governor of each state under trust-ownership for the benefit of all Nigerians, in whom is the legal title? And, what is the legal extent of the property rights of subjects under the Constitution? Thus, an attempt to legally gauge the extent of ownership rights no doubt, exposes distortions, nay violence to land as a three-dimensionally non-destructible area, denaturing same to an uncertain non-dimensional geometric description, which inquiry remain a conundrum. Thornton's prefatory exhortation that improvement of drafting quality requires an obsession to draft as to be understood but without the sacrifice of precision and accuracy; and to continue questioning, evaluation and improvement of stylistics and other …practices[104] to curing by amendment of the inelegant inhibiting texts in the Constitution itself. And until that is taken seriously as a matter of policy and law reform measures, a precise estimation of the legal extent of land property ownership rights remains perpetually an unsolved puzzle. Such ambivalence of constitutionally purporting texts to

[101] (n99).
[102] *Ibid.*
[103] Elias (n3) thus- 'examining that land in Nigeria is collectively owned, in whom is the legal title? Elias eruditely saw four possible hypothesises from the puzzle.
[104] *Ibid*p.'v'.

property rights and trickily subjecting same to economic considerations accounts for the conundrum.

VI. Recommendations

In all laissez faire states, where there is private-public tussle over the economic resources, deliberate property expropriation legislations are used to gain state hegemony. This often breeds poverty and other socio-environmental problems. Reform is always the resort to unworkable policies.

Bruce and Others write about the unprecedented land law reforms today which is partly due to the broad trend toward market liberalization and demand for stronger private rights in land,[105]proffering policy and law reform alternatives.

(i) Citizen welfare policies without clauses inhibiting human rights provisions in the Constitution could galvanize private-public sensibilities towards poverty reduction, gender equilibration and environmental conservation in tandem with the Sustainable Development Goals.

(ii) There is need for a hybrid policy between statutes and customary land laws for land tenure security, which would provide a confluence for land policy reform and law reform.

(iii) The state policy to appropriate private land for direct management must be based on popular demand rather than technocratic fixes. Decentralization may serve to promote diversity.

(iv) Modernisation and the repeal of Condominion-type Land Use Act and the trust model is urgently needed in the Nigerian model, which for so long has remained a brazen Valhalla for unworkable English statutes, replete with inadequate principles not relevant to our local complexities and pluralities.[106]There is the need to insert statutory texts on today's challenges on the environment and other linkages.[107]

[105] THE WORLD BANK: LAND LAW REFORM-Achieving Development Policy Objectives-LAW, JUSTICE AND DEVELOPMENT SERIES (2006) © The International Bank for Reconstruction and Industry. P.3.
[106]*Ibid* 3-4.
[107]*Ibid* 4, Emphasis mine.