



## Traversing the juridical terrain of land Tenure: A doctrinal foundation of land tenure systems

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### Abstract

This article interrogates the structural and jurisprudential underpinnings of land tenure systems, offering a comparative primer across Nigeria, Ghana, Kenya, and South Africa. It examines the interrelation between statutory regimes and customary practices, revealing how historical trajectories and socio-political dynamics continue to shape access, ownership, and governance of land. By distilling key conceptual models and legislative frameworks, the piece elucidates the nuanced tensions between formal and informal tenurial arrangements, especially within post-colonial African contexts. This article provides a concise overview of this intricate system highlighting its key components and inherent challenges. The article found out that the customary land tenure varies significantly across Nigeria's diverse ethnic groups, often granting communal or individual rights based on tradition and local practices. These customary arrangements, while deeply embedded in social structures lack formal documentation and has led to disputes over land ownership. In conclusion the article recommended a reform of land tenure and a nuanced approach that acknowledges the importance of customary tenure while simultaneously establishing a more transparent, efficient, and equitable framework for land ownership and management which will secure maximum security of title.

**Keywords:** Land, title, tenure, registration, gis, freehold, leasehold

### Introduction

Land is more than soil, it is culture, livelihood, identity, and power. Across the globe, systems that define how land is accessed, controlled, and transferred form the bedrock of legal structures, economic development, and social organization. These systems, collectively known as land tenure frameworks, serve as invisible architects of societal progress or regression<sup>[1]</sup>. The way land rights are conceived and implemented directly influences issues such as poverty, gender inequality, food security, political stability, and environmental stewardship<sup>[2]</sup>.

In developing countries, particularly those across sub-Saharan Africa, land tenure remains a deeply contested and evolving domain. Here, colonial legacies, statutory interventions, and rich customary traditions coexist, often uneasily, in shaping access to land. Nigeria, Africa's most populous country and a microcosm of legal pluralism, exemplifies the tensions and opportunities inherent in land governance<sup>[3]</sup>.

Historically, land tenure was governed through indigenous norms and customs, with communal ownership and flexible allocation mechanisms that prioritized social harmony<sup>[4]</sup>. These systems, while dynamic and adaptive, were largely unwritten and vulnerable to disruption. The advent of colonial administration imposed statutory mechanisms that redefined land relations, laying the groundwork for modern conflicts over ownership, legitimacy, and regulation<sup>[5]</sup>. Post-independence attempts to harmonize land governance, most notably through the Land Use Act which has been criticized for entrenching ambiguity and marginalizing rural and indigenous landholders<sup>[6]</sup>.

Land remains an essential resource that cuts across economic, social, cultural, and political dimensions of life in Nigeria<sup>[7]</sup>. Control over land reflects deeper structures of power and identity, often rooted in history and tradition. Yet, the current legal system managing land is pluralistic

and fragmented, a blend of customary practices, colonial legacies, and statutory frameworks.

This article explores the conceptual and legal foundations of land tenure, offering a panoramic view of global frameworks while drilling down into the Nigerian experience. It seeks to unpack foundational tenure concepts like types of tenure, customary landholding classifications, global models. It also seeks to analyze the legal architecture underpinning tenure systems in common law, civil law, and customary domains. The article examines Nigerian tenure systems across historical, statutory, and customary axes, critically evaluate reform efforts, challenges, and innovative pathways; offer case studies that illuminate the complex interplay between law, culture, and land politics and provide recommendations to strengthen tenure security, equity, and institutional clarity.

Using academic literature, statutory provisions, and case law, the analysis proceeds with a comparative legal lens. Footnoting follows the Oxford University Standard for the Citation of Legal Authorities (OSCOLA), ensuring clarity and publication-readiness. Ultimately, the article positions land tenure not just as a legal construct but as a social contract, one that must evolve to accommodate justice, inclusivity, and sustainable development.

### Conceptual Framework of Land Tenure

#### a. Understanding Land Tenure

Land tenure refers to the rules, institutions, and relationships governing the access, control, and transfer of land<sup>[8]</sup>. These frameworks may be legal, customary, religious, or a hybrid thereof. Fundamentally, tenure defines who can use land, for how long, and under what conditions<sup>[9]</sup>. While the term is often associated with property ownership, its scope goes far beyond ownership alone. It encompasses various rights such as occupancy, cultivation, grazing, inheritance, exclusion, and transfer.

In essence, tenure is the social construct that mediates human interaction with land. It mirrors political authority, religious beliefs, cultural norms, and economic systems <sup>[10]</sup>. As societies evolve, tenure arrangements adjust, sometimes gradually, other times violently, reflecting the dynamic relationship between people and the land they inhabit.

### **b. Historical Evolution of Tenure Systems**

Land tenure has been shaped by historical trajectories. In agrarian societies, land was communal and regulated through kinship-based authority <sup>[11]</sup>. Colonialism introduced formal land titles and statutory regulations, often displacing indigenous tenure norms <sup>[12]</sup>. Postcolonial reforms attempted to reconcile formal legality with socio-cultural legitimacy, with varying degrees of success.

In Nigeria, the shift from pre-colonial communal tenure to colonial statutory administration drastically altered land relations <sup>[13]</sup>. The emergence of urbanization, capitalist agriculture, and resource exploitation further diversified tenure models and complicated land governance.

### **c. Classifications and Categories**

Tenure systems for the purposes of this article may be broadly classified as follows private tenure, communal tenure, state tenure and informal tenure. These systems define the rights and responsibilities associated with land ownership and use.

#### **1. Private Tenure**

Private tenure refers to the assignment of rights to a private party. It is a system which grants individuals or legal entities exclusive rights to land. Freehold and leasehold are primary forms of private tenure. Freehold confers perpetual ownership, typically with the full bundle of rights (use, transfer, exclusion) <sup>[14]</sup>. While Leasehold permits occupation for a defined duration, often governed by contract or statute.

#### **2. Communal Tenure**

Communal tenure involves the relationship between people and land, whether legally or traditionally defined where land is held by individuals or groups. This system includes group oversight and rules to keep land within the group. Communal tenure is common in African settings and it treats land as a collective resource held by a community or lineage. Allocation is based on status, need, and customary norms <sup>[15]</sup>. While flexible and inclusive, it can lack legal certainty in statutory systems.

#### **3. State Tenure**

State tenure refers to the legal or customary arrangements that determine how land is owned, used, and managed by the state while allocating rights to individuals or group. Governments may assert ownership over public lands, often allocating them through permits, concessions, or compulsory acquisition. State tenure is prominent in socialist and post-colonial regimes <sup>[16]</sup>. In Nigeria, the Land Use Act centralized land under state control <sup>[17]</sup>.

#### **4. Informal Tenure**

Informal tenure emerges in contexts where formal systems are inaccessible. Urban slums, peri-urban settlements, and refugee camps often operate outside statutory recognition. It encompasses land transactions not legally recognized or officially registered. It can also involve situations where an

individual occupies land without having legal ownership. It is to be noted that though informal tenure lacks legal title, it may enjoy social legitimacy <sup>[18]</sup>.

### **a. Tenure Rights and Security**

Tenure systems define various rights including the following to wit: use rights. Use right relates to the right to farming and residence; control rights relates to the right of decision-making on land use; transfer rights is the right to sell or lease the land and pass it as an inheritance to beneficiaries; exclusion rights connotes the right to prevent unauthorized entry.

Security of tenure refers to the degree of protection from eviction or arbitrary dispossession <sup>[19]</sup>. Tenure security enables investment, credit access, and dispute reduction. Conversely, insecure tenure leads to exploitation, displacement, and underdevelopment <sup>[20]</sup>.

### **b. Legal Pluralism and Tenure Complexity**

Many countries, including Nigeria, operate under legal pluralism, where multiple tenure systems, including statutory law, customary law, and religious law coexist <sup>[21]</sup>. This coexistence generates tension and uncertainty. For instance, statutory systems may not recognize customary allocations, leading to overlapping claims and contestations <sup>[22]</sup>.

Navigating plural systems requires careful legal reform that respects cultural legitimacy while ensuring legal certainty and equity. It also demands innovative dispute resolution mechanisms and harmonization policies.

### **Global Legal Foundations of Land Tenure**

Understanding land tenure across jurisdictions requires grappling with the philosophical, legal, and institutional frameworks that have shaped property relations over centuries. From the feudal structures of medieval Europe to the communal land systems of indigenous societies, tenure arrangements reflect society's approach to authority, entitlement, and spatial governance. We shall explore the three dominant legal traditions, common law, civil law, and customary systems, and assesses how international instruments have increasingly influenced national tenure regimes.

#### **1. The Common Law Tradition**

The common law tradition, widely adopted in former British colonies and Anglo-American legal systems, views land as a constellation of rights rather than a singular object of ownership <sup>[23]</sup>. Derived from feudal principles, common law does not recognize absolute ownership by private individuals; rather, all land is theoretically held by the state or sovereign, with individuals enjoying various estates and interests.

Fee simple absolute is regarded as the most comprehensive estate in land under common law. It grants perpetual rights of use, exclusion, transfer, and inheritance, subject only to overriding public law limitations <sup>[24]</sup>. Leasehold estates granted for a specific duration, allow tenants rights of occupation, often regulated through contract and statutory provisions. The doctrine of estates underpins this layered system, ensuring that current and future interests in land can coexist within the bounds of legal recognition.

Another hallmark of common law system is the emphasis on title registration. Jurisdictions like England and Wales have

adopted land registration mechanisms under laws such as the Land Registration Act 2002 <sup>[25]</sup>, which aims to simplify conveyancing, reduce disputes, and provide clarity over ownership. Registration not only facilitates market transactions but also secures legal certainty for landholders. Despite its rigor, the common law framework presents challenges. The complexity of its terminology and the bifurcation between legal and equitable interests often make it inaccessible to laypersons. Conveyancing procedures can be costly and bureaucratic, and without appropriate safeguards, tenure systems may reinforce social exclusion, particularly in contexts with limited access to legal literacy or formal title documentation.

## 2. The Civil Law Tradition

Rooted in Roman jurisprudence and codified statutes, the civil law tradition adopts a markedly different approach to land tenure. Here, ownership is conceptualized as a unitary and absolute right, dominium with fewer distinctions between various interests <sup>[26]</sup>. Civil law regimes treat property as an object over which individuals have complete control, bounded only by public regulation and legal norms <sup>[27]</sup>.

Ownership rights are recorded in central cadastres or land registries, often managed by public authorities. These systems prioritize clarity, predictability, and simplicity <sup>[28]</sup>. Transfers, leases, and mortgages are governed by national civil codes, such as France's Code Civil <sup>[29]</sup> or Germany's Bürgerliches Gesetzbuch <sup>[30]</sup>, which set out rules in a systematic and accessible fashion.

Civil law systems are praised for their efficiency and ease of administration. Unlike common law, there is less reliance on precedent; judicial interpretation tends to adhere closely to statutory text. This reduces complexity but can also inhibit flexibility in resolving novel disputes or accommodating unconventional tenure arrangements. In practice, civil law jurisdictions may struggle with historical injustices, land fragmentation, or informal settlements, issues that codified systems often lack the tools to address sensitively. Moreover, in multicultural societies, the rigidity of civil law may marginalize customary claims or indigenous land arrangements that do not conform to statutory models <sup>[31]</sup>.

## 3. Customary Law Systems

Customary tenure systems constitute a third legal tradition, one often overlooked in global property discourse but crucial in many parts of Africa, Asia, and the Pacific. These systems derive legitimacy not from formal legislation, but from community consensus, oral tradition, and cultural practices. They perceive land as a communal asset, intrinsically linked to identity, ancestry, and spiritual relationships <sup>[32]</sup>.

In such systems, land is seldom owned outright. Instead, rights are allocated based on lineage, role within the community, or functional need. Transfers are rare and often circumscribed by strict norms prohibiting sale outside the group <sup>[33]</sup>. Dispute resolution is handled through elders, chiefs, or councils, with emphasis on restoration over punishment. In *Chief Ojo v. Chief Adebayo & Ors*, the dispute arose over land ownership in a Yoruba community. The parties had previously submitted to a customary arbitration panel composed of village elders and chiefs, who issued a binding decision. One party later challenged the validity of that decision in court. The issue placed before the

court to decide was whether the decision of a customary arbitration panel, reached through traditional dispute resolution, could be enforced by the formal court system. The Court of Appeal upheld the validity of the customary arbitration, emphasizing that where parties voluntarily submit to the authority of traditional leaders, and the process is fair and consistent with local customs, the outcome is binding and enforceable. This case law reinforces the principle that customary dispute resolution, centered on restoration, reconciliation, and communal harmony, is legally recognized when parties consent. The case further affirms that elders and chiefs can play a legitimate role in resolving disputes, especially in matters involving land, family, and community relations.

Customary systems offer notable advantages. They are accessible, deeply rooted, and capable of evolving with social dynamics. They facilitate inclusive access and allow flexible use arrangements. However, their oral nature and lack of formal documentation can generate challenges in interfacing with statutory regimes <sup>[34]</sup>. Without written records or legal codification, customary claims may be vulnerable in courts dominated by statutory norms. Moreover, customary systems often reflect patriarchal values, restricting women's and youth access to land.

Recognition of customary land rights is increasingly gaining traction; particularly as global development agendas acknowledge indigenous sovereignty and cultural preservation. The challenge lies in integrating customary norms without distorting them or subjecting them to the same bureaucratic limitations as statutory systems <sup>[35]</sup>.

## 4. Legal Pluralism and Hybrid Systems

Many nations, especially in the Global South, operate within hybrid frameworks where statutory and customary systems coexist, a phenomenon known as legal pluralism. Nigeria, for instance, combines English-derived statutory tenure with diverse ethnic-based customary arrangements. While such pluralism offers cultural sensitivity and multiple avenues for claiming land, it also fosters ambiguity, jurisdictional overlap, and inconsistent enforcement. Many nations, especially in the Global South, operate within hybrid frameworks. Nigeria, for instance, blends common law and customary land rights through instruments like the Land Use Act <sup>[36]</sup>. The Kenyan Constitution 2010 explicitly recognizes community land rights <sup>[37]</sup>, while South Africa addresses informal tenure through statutes such as the Interim Protection of Informal Land Rights Act <sup>[38]</sup> and the Communal Land Rights Act <sup>[39]</sup>.

Legal pluralism allows contextual flexibility but may also result in jurisdictional conflicts, especially where courts privilege statutory claims over indigenous customs <sup>[40]</sup>. In hybrid systems, constitutional recognition of customary tenure is a necessary but insufficient condition for equity. Efforts to harmonize laws must go beyond declaratory provisions, engaging with grassroots institutions, reforming judicial mechanisms, and integrating informal practices into formal land registries. Failure to reconcile these systems risks creating dual hierarchies, where statutory claims overpower customary ones in times of conflict.

## 5. International Legal Instruments

Land tenure governance has increasingly become the subject of international legal and policy frameworks. Although many of these instruments are non-binding, they shape

donor priorities, national legislation, and civil society advocacy. The Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure (2012) set global benchmarks for transparency, equity, and inclusivity in tenure arrangements. The guidelines emphasize participation of stakeholders, protection of customary rights, and gender-sensitive approaches.

Similarly, the Universal Declaration of Human Rights enshrines property rights in Article 17, asserting that no one shall be arbitrarily deprived of their property<sup>[41]</sup>. Regional instruments such as the African Union's Framework and Guidelines on Land Policy promote harmonization, participatory reform, and equitable access in land governance across member states.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>[42]</sup> also has significant implications for tenure reform, requiring member states to ensure equal property rights for women and address cultural barriers that limit their access.

These international frameworks do not impose direct obligations but serve as normative models for domestic reform. They have catalyzed legislative changes, inspired court decisions, and provided metrics for evaluating governance outcomes. Comparative analysis of tenure frameworks reveals that each system, common law, civil law, and customary law, offers distinct advantages and constraints. Common law promotes legal certainty but struggles with complexity and accessibility. Civil law systems enhance predictability but may be rigid and less inclusive of non-conforming arrangements. Customary law fosters community legitimacy and adaptability, yet often lacks enforceability in formal legal arenas.

The rise of legal pluralism and international standards compels states to rethink tenure governance beyond doctrinal purity. Effective land systems must blend statutory clarity with cultural resonance, safeguard vulnerable groups, and adapt to evolving societal needs. As climate change, urbanization, and demographic shifts reshape land relations worldwide, the challenge is not merely legal but ethical: designing tenure regimes that embody justice, sustainability, and dignity for all.

## **Nigerian Land Tenure Landscape**

### **1. Historical Context: Evolution of Land Tenure in Nigeria**

The trajectory of land tenure in Nigeria reflects a complex interplay of indigenous customs, colonial impositions, and post-independence legal reforms. Before colonial rule, land was held communally by families, lineages, and ethnic groups, governed by unwritten norms and regulated by elders or chiefs<sup>[43]</sup>. Access to land was often determined by birthright, marital affiliation, or social status, and the concept of outright private ownership was largely absent. Land served not just economic needs but was deeply embedded in spiritual and communal identity<sup>[44]</sup>.

Colonial administration ushered in statutory systems that redefined these customary relationships. In the north of Nigeria, British indirect rule preserved Islamic legal traditions that regulated land under principles of usufruct and trusteeship<sup>[3]</sup>. In contrast, the south experienced more aggressive legal transplantation from English property law, with written conveyances, surveyed parcels, and courts

enforcing alien concepts of individual ownership<sup>[45]</sup>. This bifurcation led to legal pluralism that persists to this day.

Upon independence in 1960, Nigeria grappled with reconciling inherited colonial laws with persistent customary practices. Land disputes became common, urban expansion challenged traditional tenure, and economic development necessitated centralized planning. The attempt to rationalize tenure culminated in the Land Use Act of 1978, which remains the dominant statutory framework.

### **2. The Land Use Act: Features and Implications**

Enacted as a military decree but now treated as part of the Nigerian Constitution, the Land Use Act (LUA) restructured land ownership by vesting all land in each state (excluding federal lands) in the Governor, to be held in trust for the people<sup>[46]</sup>. It abolished the notion of private freehold title and instituted a regime of rights of occupancy, statutory and customary, granted by state and local authorities respectively<sup>[47]</sup>. The Act's objectives included preventing land speculation, streamlining acquisition for public purposes, and promoting equitable access to land<sup>[48]</sup>. However, its implementation has generated significant controversy.

Governors were conferred near-absolute powers over land allocation, often exercised without transparency or public accountability<sup>[49]</sup>. The requirement for Governor's consent for transfers, mortgages, or leases introduces bureaucratic hurdles, delays, and avenues for corruption. Statutory rights of occupancy, though registrable, remain subject to revocation in the "public interest," a vague standard frequently invoked with minimal recourse<sup>[50]</sup>.

For rural communities, especially those governed by customary norms, the LUA created ambiguity. While customary rights of occupancy are recognized, they must conform to administrative procedures foreign to traditional tenure. Conflicts have arisen when land allocated under statutory rights overlaps with ancestral claims unregistered in official records<sup>[51]</sup>.

### **3. Customary Tenure Systems in Nigeria**

Despite the Land Use Act's dominance, customary tenure remains widespread, particularly in rural Nigeria. Customary tenure governs land access through unwritten rules based on lineage, social roles, and community consensus. It is flexible, adaptive, and deeply integrated into local norms<sup>[52]</sup>. Land is rarely commodified; it is allocated for farming, residence, or grazing, and often held collectively. Transfers are regulated by elders, and sales to outsiders are discouraged or prohibited. Dispute resolution is non-adversarial, with emphasis on restoring harmony.

However, customary tenure faces challenges in formal legal contexts. The absence of documentation renders claims precarious in statutory courts. Women's land rights under customary systems are frequently curtailed, with inheritance and control passing through male relatives<sup>[53]</sup>. Moreover, as urban expansion and commercial agriculture encroach upon communal lands, customary holders face displacement without adequate compensation.

Efforts to codify customary tenure have been partial. Some states, such as Benue and Ogun, have tried integrating customary titles into formal registries, yet implementation remains uneven. Civil society organizations continue to advocate for formal recognition and protection of customary

claims, emphasizing their legitimacy and social functionality.

#### 4. The Dualism of Statutory and Customary Law

Nigeria's land governance operates within a legally pluralist framework. Statutory law, formalized in the LUA and interpreted by courts, exists alongside customary law, validated by community practice and moral authority. This dualism creates tensions, especially when statutory allocations contradict or override customary usage<sup>[54]</sup>.

The case of *Obaje*<sup>[55]</sup> illustrates this point. The respondent claimed ownership of land based on a customary right of occupancy, supported by a power of attorney from the original customary owner. The appellant, however, held a Certificate of Occupancy and argued that the transfer was invalid without the consent of the Minister. The question for determination was whether the absence of Governor's consent invalidated the customary transfer of land rights. The Supreme Court held that Governor's consent is not required for alienation of interest in land not covered by statutory right of occupancy, especially in non-contentious transactions between private individuals. The Court emphasized that the Land Use Act should not be interpreted to deny parties their rights to use and enjoy land under customary tenure. This case reaffirmed that a Certificate of Occupancy is not conclusive proof of title, it is only prima facie evidence and that customary land rights, when properly established, can override statutory claims, especially where the statutory title was improperly granted or conflicts with existing customary ownership.

Courts often struggle with reconciling both systems. While appellate decisions have upheld the legitimacy of customary rights, enforcement is uneven. Bureaucracies favor documentary proof, leaving oral customary claims at a disadvantage. Furthermore, constitutional provisions recognizing customary law are often undermined by administrative practices that privilege statutory instruments. This legal dualism also affects land administration. State ministries issue Certificates of Occupancy based on statutory law, while local governments manage rural land under customary tenure. Overlapping responsibilities contribute to inefficiency, delays, and opaque decision-making. Reform efforts have called for harmonization—either through legislative amendments to the LUA or constitutional reforms that elevate customary law to equal status<sup>[56]</sup>.

#### 5. Gender and Youth Access to Land

Both statutory and customary land systems in Nigeria marginalize women and youth. The LUA does not explicitly prohibit discrimination, but neither does it provide affirmative protections for gender equity in land access<sup>[57]</sup>. Customary norms, especially in patrilineal societies, often deny women inheritance rights or restrict land ownership to men. In *Ukeje v. Ukeje*<sup>[58]</sup>, the appellant, Mrs. Gladys Ada Ukeje, was the daughter of Lazarus Ogbonna Ukeje, who died intestate. Under Igbo customary law, female children were traditionally excluded from inheriting their father's estate. The family denied her inheritance rights on this basis. The issue of determination was whether the Igbo customary law that disinherits female children violates the Nigerian Constitution. The Supreme Court held that any customary law that excludes female children from inheritance is unconstitutional, as it violates Section 42(1) and (2) of the

1999 Constitution, which guarantees freedom from discrimination. This case invalidated discriminatory Igbo customary inheritance norms; affirmed that gender-based exclusion from inheritance is unconstitutional and set a precedent for challenging similar customs in other patrilineal societies across Nigeria.

While some reforms have sought to redress these imbalances, such as judicial recognition of widows' rights or legislation promoting female inclusion, implementation lags. Activist litigation and policy advocacy have made gains, but cultural resistance persists, especially in rural contexts.

Youth access is also limited. Rising land prices, lack of credit facilities, and bureaucratic hurdles make land acquisition difficult for young Nigerians. This exclusion affects agriculture, entrepreneurship, and urban settlement<sup>[59]</sup>. Ensuring intergenerational equity in tenure is essential for social cohesion and sustainable development.

#### 6. Institutional Actors in Land Governance

Land tenure in Nigeria involves a complex web of institutions. State Ministries of Lands are responsible for issuing statutory rights and managing urban land. Local Governments oversee customary allocations, especially in rural areas. Survey departments handle mapping and cadastral functions. Courts adjudicate disputes, often interpreting both statutory and customary norms<sup>[60]</sup>.

In theory, the Land Use and Allocation Committees (LUAC) are meant to advise governors on land matters, but in practice, their roles are often opaque or circumvented. Corruption remains a persistent issue, with land allocations tied to political patronage or economic interests. Digitization and land record management reforms have been proposed to enhance transparency, but implementation is slow and uneven across states.

A coherent and efficient institutional framework is vital. This requires clarifying roles, reducing overlaps, investing in capacity-building, and ensuring public accountability. Without institutional reform, tenure insecurity will persist, undermining land justice and development goals.

#### Land Tenure Reform and Policy Challenges

Land tenure reform is an indispensable dimension of legal and socio-economic transformation, particularly in societies grappling with historical dispossession, informal settlements, agricultural inefficiencies, and rising demands for infrastructure and urbanization. In Nigeria, reforming the land tenure system has long been positioned as a strategy to enhance tenure security, reduce disputes, promote investment, and ensure equitable access. Yet, despite decades of reform efforts, implementation challenges continue to impede progress. This section offers an exhaustive analysis of the drivers behind land reform, the institutional and legal hurdles that frustrate meaningful change, and the political economy that shapes outcomes on the ground.

##### 1. Drivers of Land Tenure Reform

Tenure reform is typically driven by a constellation of factors, each underscoring the limitations of existing legal regimes. First, agricultural productivity and rural development necessitate clear and secure land rights. Without formal documentation or enforceable tenure, farmers lack incentives to invest long-term, cannot access

credit, and remain vulnerable to eviction <sup>[61]</sup>. The fragmentation of tenure arrangements, especially under customary systems, undermines scalable agricultural interventions and cooperative models.

Second, tenure reform serves to resolve longstanding land disputes. In Nigeria, inter-communal conflicts over land boundaries, violent clashes between herders and farmers, and disputes arising from unclear statutory allocations have highlighted the need for harmonized, transparent systems <sup>[62]</sup>. Ethno-regional tensions are often aggravated by land competition, especially in areas with mixed customary and statutory claims.

Third, urban expansion, fueled by population growth and economic migration, exerts immense pressure on land administration systems. Informal settlements proliferate around cities like Lagos, Abuja, and Port Harcourt, where land transactions take place outside legal oversight <sup>[63]</sup>. Reform is vital to integrate these settlements, protect vulnerable populations from displacement, and manage urban planning effectively.

Finally, investment and infrastructure projects depend on predictable land governance. Foreign investors, local businesses, and public agencies require certainty regarding land access, tenure duration, and compensation mechanisms. An opaque or politicized land system discourages capital inflows and delays development.

## 2. Legal and Institutional Challenges

Despite compelling motivations for reform, Nigeria's legal and institutional landscape presents formidable obstacles. The Land Use Act of 1978 remains central, but its rigidity, lack of clarity, and centralized authority structures have drawn extensive criticism. The requirement for governor's consent to alienate or mortgage land creates bottlenecks and opportunities for rent-seeking <sup>[64]</sup>. The lack of uniform implementation across states leads to disparities, with some jurisdictions embracing digital titling while others remain trapped in manual record-keeping and patronage systems.

The dualism between statutory and customary tenure adds complexity. Customary rights are acknowledged in principle but often sidelined during formal allocations or acquisitions <sup>[65]</sup>. Disputes frequently emerge when land allocated under statutory schemes overlaps with community-held land, particularly in rural areas. Courts have rendered conflicting decisions, and legislative reform remains contentious given the entrenched political interests surrounding land.

Institutional fragmentation also hampers reform. Multiple bodies, including state ministries of land, local governments, survey departments, and allocation committees, operate with overlapping mandates, poor coordination, and limited capacity <sup>[66]</sup>. Bureaucratic inefficiency, corruption, and lack of transparency further entrench public mistrust in land governance.

## 3. Political Economy of Land Reform

Land is not merely a legal asset, it is a political resource and instrument of power. In Nigeria, governors' control over land under the LUA has become a tool for political patronage, electioneering, and economic dominance <sup>[67]</sup>. Allocation processes are often opaque, with land parceled out to allies, donors, or private developers under terms inaccessible to ordinary citizens.

Attempts to amend the LUA or decentralize authority have faced resistance. Legislators, political elites, and vested

interests fear that reform would dilute their control, expose past irregularities, or empower communities with autonomy <sup>[68]</sup>. As such, reform becomes a delicate balancing act between legal rationalization and political negotiation.

Civil society groups and development agencies have sought to drive reform through advocacy, litigation, and pilot projects. Land rights organizations have documented dispossession and pushed for gender inclusion, legal harmonization, and participatory policy-making <sup>[69]</sup>. However, their efforts often confront resistance from traditional institutions, religious authorities, and conservative political actors.

## 4. Technical and Administrative Bottlenecks

Beyond legal and political barriers, reform also faces technical challenges. In many states, land records are incomplete, inaccessible, or duplicated. Cadastral mapping remains outdated, and Geographic Information Systems (GIS) are underutilized. The lack of a national land registry and standardized procedures means that titles issued in one state may not be recognized elsewhere.

Surveying processes are expensive and time-consuming, deterring rural communities from registering land. Staff shortages, inadequate training, and poor infrastructure further impede modernization. Digital transformation initiatives, though promising, have yet to be fully scaled, and many rural areas lack connectivity or literacy to engage with e-governance systems.

## 5. Socio-Cultural Resistance

Reform must navigate deep-rooted socio-cultural norms, especially regarding inheritance, gender, and communal decision-making. For example, attempts to formalize customary tenure may be perceived as undermining community authority or commodifying sacred land <sup>[70]</sup>.

Gender-sensitive reforms often face pushback in patriarchal societies, where land ownership is traditionally a male preserve. Youth and marginalized populations may also struggle to assert claims in systems dominated by elders or elites. Building legitimacy for reform requires participatory processes, public education, and the sensitization of traditional rulers and religious leaders.

While challenges persist, various initiatives have demonstrated that reform is both feasible and beneficial. Some Nigerian states have piloted one-stop land registries that reduce transaction costs and increase public trust. Others have partnered with donor agencies to digitize records and train officials.

Legal advocacy has secured judicial recognition of women's land rights, while land policy documents have incorporated customary claims <sup>[71]</sup>. Community-driven mapping and certification projects have shown that tenure reform can align with social values if approached collaboratively.

In the long term, meaningful reform demands a multidimensional strategy, one that addresses legal harmonization, institutional reform, capacity-building, and cultural engagement. Only then can land tenure systems promote justice, security, and development across Nigeria.

## Case Studies from Nigeria

Case studies offer vivid insights into how land tenure systems operate in specific Nigerian contexts, illustrating the friction between statutory and customary law, the consequences of weak governance, and the creative

strategies communities use to assert their rights. These examples, from rural land disputes to urban planning controversies, highlight the multidimensional challenges facing land governance in Nigeria, and underscore the urgency of reform.

### 1. Communal Tenure Conflict in Benue State

Benue State, located in Nigeria's Middle Belt region, is emblematic of communal land tenure complexity. Home to predominantly agrarian communities, the state has historically operated under customary tenure, with land held by family units and allocated through clan structures<sup>[72]</sup>. For decades, this model served the subsistence needs of farmers, preserving social harmony and ensuring access to farmland based on kinship and tradition.

However, the past two decades have witnessed growing tensions due to population growth, pressure from commercial agriculture, and conflict with migrating pastoralists<sup>[73]</sup>. The influx of nomadic herders, especially in rural Guma and Logo Local Government Areas, has resulted in violent clashes over land usage. Customary landholders, lacking formal documentation, have been displaced or dispossessed<sup>[74]</sup>.

Efforts by the state government to allocate land for mechanized farming and development projects have further strained communal tenure systems. In many instances, land acquired under statutory right of occupancy overlapped with farmland allocated through oral customary grants, triggering disputes<sup>[75]</sup>. The inability to harmonize these claims and the absence of conflict-sensitive land adjudication mechanisms have fueled litigation, resentment, and deepened ethnic divisions.

Civil society organizations have responded by documenting customary boundaries and advocating for their integration into statutory land records. Nonetheless, progress remains limited, and the Benue case demonstrates how neglecting the legitimacy of communal tenure can destabilize rural economies and communities.

### 2. Urban Expansion and Land Allocation in Abuja

Nigeria's capital city, Abuja, represents another extreme of land tenure dynamics, one driven by urbanization, bureaucratic control, and land speculation. Established as a planned city in the late 1970s, Abuja's development was premised on centralized land administration under the Federal Capital Development Authority (FCDA)<sup>[76]</sup>. The Land Use Act was applied with particular intensity, vesting all lands within the Federal Capital Territory in the presidency and placing management in the hands of FCDA and associated agencies.

Rapid population growth and demand for housing have overwhelmed official planning. Informal settlements such as Mpape, Karmo, and Gwagwa have mushroomed around the city, housing workers unable to afford formally allocated plots<sup>[77]</sup>. These settlements operate without Certificates of Occupancy or statutory rights, and are vulnerable to demolition without compensation.

Controversies have emerged over land allocation to political elites, foreign investors, and private developers<sup>[78]</sup>. Allegations of corruption, double allocations, and unauthorized land sales abound. Public trust in FCDA has eroded, and legal challenges to eviction orders have raised constitutional questions over tenure security and the public interest justification under the LUA.

Moreover, customary landowners from indigenous communities, such as the Gwari and Koro peoples, have faced dispossession without adequate negotiation or protection<sup>[79]</sup>. Their ancestral lands were absorbed into the expanding capital territory without preserving customary tenure or offering alternative compensation. Court cases and advocacy campaigns have attempted to assert rights based on constitutional guarantees and historical continuity, but success has been inconsistent. The Abuja case reveals how statutory dominance, when coupled with opaque governance, can undermine the goals of orderly development and tenure equity.

### 3. Resource-Based Claims in the Niger Delta

The Niger Delta region, rich in oil resources and environmental diversity, presents one of Nigeria's most contentious tenure environments. Here, the clash between communal tenure systems, federal resource control, and multinational corporate interests creates a volatile mixture of ecological degradation, social unrest, and legal ambiguity.

Under Nigerian law, subsurface mineral rights belong to the federal government, while surface land rights are governed by the LUA<sup>[80]</sup>. However, oil exploration activities frequently encroach upon community lands without consultation or compensation. Traditional landowners, operating under customary tenure, find themselves excluded from decisions about the exploitation of their environment.

Communities such as Ogoni, Ijaw, and Itsekiri have documented patterns of land loss, displacement, and destruction of agricultural livelihoods due to oil spills, pipeline construction, and government-backed acquisitions<sup>[81]</sup>. The lack of clear documentation of customary land ownership makes legal redress difficult. Some landmark cases, such as *Gbemre v Shell Petroleum Development Company* have asserted community rights over environmental degradation, but enforcement has been patchy<sup>[82]</sup>.

Grassroots movements, including the Movement for the Survival of the Ogoni People (MOSOP), have reframed land rights as human rights, demanding environmental justice and tenure protection<sup>[83]</sup>. The Niger Delta thus illustrates the interface between tenure insecurity, environmental vulnerability, and rights-based activism.

### 4. Tenure Innovation and Reform in Ondo State

While many Nigerian case studies illustrate dysfunction, some states have pioneered progressive tenure reforms. Ondo State, in southwestern Nigeria, has piloted digitized land records, streamlined allocation procedures, and recognized informal settlements through tenure regularization programs<sup>[84]</sup>.

Through its Ministry of Lands and Housing, Ondo developed a digital land information system that enables efficient documentation, reduces duplication, and facilitates public access to land records. Furthermore, the state launched campaigns to certify customary landholdings, providing transitional titles that can later be upgraded to full statutory occupancy rights<sup>[85]</sup>.

Community engagement has been key to success. Local chiefs and elders have participated in mapping exercises, and gender inclusion initiatives have encouraged female-headed households to register land. Although challenges remain—especially regarding funding and staff capacity—

the Ondo model demonstrates that inclusive, transparent, and culturally sensitive reform is possible.

### 5. Lessons from Nigerian Case Studies

The diversity of Nigeria's land tenure experiences reveals that no single approach suffices. Urban and rural settings present distinct challenges; statutory and customary laws often collide; and political, environmental, and economic contexts shape outcomes. Successful tenure reform must be localized, participatory, and respectful of historical claims. Legal harmonization, improved land administration, community mapping, gender inclusion, and dispute resolution mechanisms are all critical. Case studies also demonstrate that tenure security is not merely about documentation but about legitimacy, fairness, and voice. Without these foundations, even the most sophisticated legal systems will fail to deliver equitable land governance.

### Comparative African Perspectives

Land tenure issues are not unique to Nigeria—they permeate the African continent, shaped by colonial legacies, diverse customary practices, and evolving legal frameworks. Examining comparative experiences in Ghana, Kenya, and South Africa provides valuable insight into regional efforts to harmonize tenure systems, promote equity, and strengthen governance. These country-specific reforms showcase both the challenges of legal pluralism and the innovative responses designed to address tenure insecurity.

#### 1. Ghana: Codification of Customary Tenure through Stool Lands

Ghana presents a compelling model of legal integration between customary and statutory land systems. Unlike Nigeria's statutory dominance, Ghana has formally recognized stool lands, land owned and administered by traditional chiefs and clans, as a legitimate part of the national tenure framework<sup>[86]</sup>.

Under Ghana's Constitution and the Land Act 2020<sup>[87]</sup>, customary authorities are empowered to manage land on behalf of their communities. The state, through the Office of the Administrator of Stool Lands (OASL), collects revenue and ensures accountability<sup>[88]</sup>. Customary land transactions are subject to registration, and chiefs must act as fiduciaries, avoiding arbitrary allocations or personal enrichment.

Despite these legal advances, implementation challenges remain. Chiefs occasionally act without community consent, triggering disputes. The rapid urbanization around Accra and Kumasi has increased land value, leading to conflicts between traditional owners and developers. Women's land rights under customary tenure also remain limited in practice, despite legal mandates for inclusion<sup>[89]</sup>.

Nonetheless, Ghana's experience demonstrates that codification and structured accountability can preserve customary legitimacy while reducing administrative fragmentation.

#### 2. Kenya: Constitutional Reform and Gender Inclusion

Kenya's land tenure system has historically mirrored many of Nigeria's problems, legal dualism, exclusionary practices, and corruption in land administration. However, landmark

constitutional reforms have transformed the legal landscape. The Constitution of Kenya (2010) enshrines land rights as a constitutional guarantee and explicitly recognizes customary tenure, community land, and the importance of equitable access<sup>[90]</sup>. Article 40 provides for the protection of property rights, while Article 60 sets out principles of land policy, including sustainability, productivity, and non-discrimination.

Complementing these reforms are the Land Act 2012, the Land Registration Act 2012, and the Community Land Act 2016. These statutes harmonize tenure systems, streamline registration processes, and offer mechanisms for the protection and adjudication of communal land rights<sup>[91]</sup>.

Kenya has also taken bold steps to address gender disparity. The Constitution prohibits discrimination in property matters, and judicial decisions have affirmed women's inheritance and ownership rights, especially within customary systems<sup>[92]</sup>. Civil society organizations have played a crucial role in advocating for gender-sensitive implementation and engaging with traditional elders to reinterpret customary norms in line with constitutional values.

While land grabbing, overlapping claims, and informal settlements persist, Kenya's approach illustrates the transformative potential of constitutional clarity and participatory legal reform.

#### 3. South Africa: Post-Apartheid Tenure Reform

South Africa's tenure context is shaped by a history of racial dispossession, apartheid spatial planning, and deep land inequality. Post-1994, the state embarked on an ambitious land reform program encompassing land restitution, land redistribution, and tenure reform<sup>[93]</sup>.

Restitution sought to return land lost under racially discriminatory laws. Under the Restitution of Land Rights Act 1994, claimants could seek restoration or compensation for historical losses<sup>[94]</sup>. Redistribution aimed to transfer land from white commercial owners to black citizens for farming or housing. Tenure reform addressed insecure rights on communal lands, farms, and informal settlements. Despite political commitment, progress has been slow. Administrative bottlenecks, lack of resources, and poor post-transfer support have undermined impact. Tenure reform in communal areas has been particularly contentious, with debates over the role of traditional authorities versus individual land rights<sup>[95]</sup>.

Legislation such as the Traditional Leadership and Governance Framework Act 2003 and the Communal Land Rights Act 2004 have attempted to mediate these tensions, though legal challenges and civil society opposition have exposed unresolved contradiction<sup>[96]</sup>. South Africa's experience reflects the complexity of redressing historical injustice while crafting inclusive and functional tenure systems. It underscores the need for not only legal innovation but political will and sustained institutional investment.

#### 4. Cross-Cutting Lessons and Regional Trends

These African experiences reveal both diversity and convergence in land tenure reform. Ghana's codified customary systems offer a roadmap for integrating tradition

with state oversight. Kenya's constitutional framework foregrounds equity and inclusivity, particularly for women and marginalized groups. South Africa's restitution-driven reforms grapple with the legacy of structural inequality and the challenge of institutional delivery.

Across the continent, regional frameworks such as the African Union's Framework and Guidelines on Land Policy in Africa (2009) promote harmonization, sustainability, and participatory governance. They urge member states to recognize legal pluralism, address historical injustices, and promote access for vulnerable groups. Ultimately, comparative analysis affirms that reform is not only about law—it is about power, culture, legitimacy, and justice. African states must balance these forces with sensitivity and pragmatism, forging tenure systems that reflect their history and aspirations.

### Conclusion

Land tenure is far more than a technical legal arrangement, it is a foundation for social justice, economic resilience, and environmental sustainability. Nigeria's experience, marked by legal pluralism, statutory rigidity, and vibrant customary practices, reveals both the promise and perils of tenure governance. The Land Use Act, while intended to streamline land administration, has introduced complexity, centralized control, and marginalized indigenous systems. Case studies from Benue, Abuja, and the Niger Delta demonstrate how tenure insecurity can catalyze conflict, displace vulnerable groups, and hinder development.

Comparative insights from Ghana, Kenya, and South Africa show that reform is possible when grounded in constitutional clarity, inclusive policies, and respect for community legitimacy. Whether through codification of customary law, gender-sensitive legislation, or participatory mapping initiatives, these models illustrate paths toward more equitable tenure systems.

Ultimately, Nigeria's future depends on its ability to reconcile tradition with innovation, law with legitimacy, and rights with responsibility. A coherent, inclusive, and transparent land tenure framework is not just a legal necessity—it is a moral imperative for building a more just and prosperous society.

### Recommendations

#### 1. Legal Harmonization and Reform

Nigeria should undertake a structured amendment of the Land Use Act to reflect contemporary realities and integrate customary land rights more substantively. This includes recognizing communal tenure in a way that protects traditional landowners while also providing them access to formal legal instruments. Repealing ambiguous provisions—like those relating to governor's discretionary powers and arbitrary revocation clauses—would offer clarity and reduce abuse.

#### 2. Digital Transformation of Land Records

A nationwide land information system using Geographic Information Systems (GIS) and blockchain-backed registries can drastically improve tenure transparency. Digitization would help document customary holdings, streamline conveyancing, and reduce fraudulent transactions. Pilot programs in select states should be scaled up, with strong federal support and investment in technical infrastructure.

### 3. Gender Equity and Inclusion

Existing constitutional protections must be backed by enforceable policies. Targeted interventions—such as subsidized title processing for women, mobile legal clinics, and civic education—can dismantle cultural barriers to women's land rights. Training traditional authorities on gender-sensitive land allocation can also shift norms over time.

### 4. Participatory Policy-Making and Community Engagement

Reform must be bottom-up as well as top-down. Engaging local leaders, elders, youth, and women in the design and implementation of land policies strengthens legitimacy and sustainability. Town hall consultations, community mapping exercises, and cultural impact assessments can bridge the gap between national goals and local realities.

### 5. Institutional Streamlining and Accountability

Land governance involves multiple agencies, state ministries, local governments, surveying departments, and courts. These bodies require clear mandates, better coordination, and increased transparency. Setting up independent land commissions in each state could help harmonize efforts, resolve disputes quickly, and insulate tenure decisions from political interference.

### 6. Enhancing Dispute Resolution Mechanisms

Specialized land tribunals, alternative dispute resolution panels, and restorative justice frameworks should be prioritized over adversarial litigation. These mechanisms can resolve tenure disputes efficiently, respect customary practices, and prevent escalation into violent conflict, especially in rural or ethnically diverse regions.

### 7. Youth Empowerment in Land Access

Young Nigerians face exclusion from land markets due to high costs and limited credit. Programs such as land-for-labor schemes, low-interest loans tied to land productivity, and vocational training in agribusiness can improve access and incentivize responsible land use.

### 8. Environmental and Social Safeguards

Tenure reform should be linked to sustainability. Land allocation must consider ecological impact, displacement risks, and community consent. Incorporating Environmental and Social Impact Assessments (ESIAs) into land acquisition procedures ensures that reforms do not come at the cost of biodiversity, livelihoods, or cultural heritage.

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