Afro Asian Journal of Social Sciences
Volume VIII, No I Quarter I 2017
ISSN: 2229 – 5313

AUTHORITARIANISM AND THE QUESTION OF ENVIRONMENTAL JUSTICE IN AFRICA: THE EXAMPLE OF LAND USE ACT OF 1978 IN NIGERIA

Omotoso, Olatunji John
Lecturer, Department of History, School of Arts and Social Sciences, College of Education, Lanlate, Oyo State, Nigeria

ABSTRACT

To an average African, land is a free gift of nature that must be nurtured according to communal ethos and value system. This informed the collective ownership and equitable distribution of land through the family units, which guaranteed environmental justice to a very large extent in the pre-colonial era. But things changed for the worse during colonial era with the land grabbing and resource-sapping policies of the alien dictatorial powers. The military rule as a form of internal colonialism quickly adopted absolute authoritarian powers in environmental management, especially land control through enactments of decrees that were largely antithesis to environmental justice across Africa. The Land Use Act promulgated by the Nigeria's Obasanjo's military junta in 1978 was one of such environmental law extremities

According to R.T. Ako (2010), Nigeria's Land Use Act, promulgated in 1978, is perhaps the most controversial legislation in the country. The Act, originally promulgated as a decree and later annexed to the country's constitution, was ostensibly made to nationalize landholding in the country. The paper primarily evaluates the peculiar and general impact of the Act on Nigerians across regions. It examines the impact and implications of the Act on the right of inhabitants to access justice and discuss traditional land tenure system in comparison with colonial type before the 1978 Act. Through the analysis of the military junta's justification for the unjust act, this paper explores what has been done and what needs to be done by the people and government to redress the injustice that had been perpetuated by this anti-peoples' Act.

Introduction

Land is one of the three major factors of production (capital and labour being the two others). It is a generally held belief that the use and control of land as a productive asset requires the establishment of a legal and institutional framework for land management. In many developing countries, effective and efficient land use planning and management is not well established (Owei, Obinna and Ede, 2010). Although, rural areas were not spared from the negative impact of this haphazard planning (Francis,2000); the most patent manifestation of this is the chaotic state of land use activities in most urban centres in Africa. The physical, economic and social conditions of the African city has been well documented (UNHABITAT, 2008). Rapid rates of urbanization have resulted in unplanned and unregulated growth of most African cities. Consequently, millions of Africa's urban dwellers live in poverty in sub – standard housing and degraded environments. Much has been written on the squalid features of these cities (Nwaka, 2005; Oyesiku 2009, Mabogunje, 2002).But this paper argues that the absence of 'environmental justice' in most sub-Saharan African countries summarizes why most of the urban centres and rural areas alike are in near total disarray.

"Environmental justice" is defined by the United States Environmental Protection Agency (EPA) as the fair treatment and meaningful involvement of all people, regardless of race, colour, national origin, culture, education or income, with respect to the development, implementation and enforcement of environmental laws, regulations and policies.1 According to the EPA, "fair treatment" means that no group of people, including racial, ethnic or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal environmental programs and policies.2 However, this study will adopt Obiora's explanation of the concept from an African perspective and consideration of the access to resources as fundamental. Obiora (1991) submits that 'Environmental justice' is:

> The equitable distribution of environmental amenities, the rectification and retribution of environmental abuses, the restoration of nature, and the fair exchange of resources. Its main insight challenges the uneven allocation of environmental risks as well as the benefits of environmental protection, industrial production, and economic growth. Given

> its structural focus, the environmental justice struggle could be seen, not simply as an attack against environmental discrimination, but as a movement to rein in and subject corporate and bureaucratic decision making, as well as relevant market processes, to democratic scrutiny and accountability.

The study also sees land use or physical planning as a process aimed at achieving orderly physical development with the overall aim of evolving a functional and liveable environment where individual and common goals can be achieved. But in most African countries that framework has been exercised mostly since the colonial days had always been an anti-thesis to Environmental justice due to more negative influence it has been playing in the distribution and accessibility to land and natural resources in most of these countries (including Nigeria) over the years.

To the average African, land is a free gift of nature that must be nurtured according to communal ethos and value system. This informed the collective ownership and equitable distribution of land through the family units, which guaranteed environmental justice to a very large extent in the pre-colonial era. But things changed for the worse during colonial era with the land grabbing and resource-sapping policies of the alien dictatorial powers. The military rule as a form of internal colonialism quickly adopted absolute authoritarian powers in environmental management, especially land control through enactments of decrees that were largely antithesis to environmental justice across Africa. The Land Use Act promulgated by the Nigeria's Obasanjo's military junta in 1978 was one of such environmental law extremities

According to R.T. Ako (2010), Nigeria's Land Use Act, promulgated in 1978, is perhaps the most controversial legislation in the country. The Act, originally promulgated as a decree and later annexed to the country's constitution, was ostensibly made to nationalize landholding in the country. The paper primarily evaluates the peculiar and general impact of the Act on Nigerians across of regions. It examines the impact and implications of the Act on the right of inhabitants to access justice and discuss traditional land tenure system in comparison with colonial type before the 1978 Act. Through the analysis of the military junta's justification for the unjust act, this paper explores what has been done and what needs to be done by the people and government to redress the injustice that had been perpetuated by this anti-peoples' Act.

Land Tenure System in Pre-colonial Nigeria

According to Arua (2012), there are three types of land tenure systems, namely, communal, individual or private and public. As it has been established earlier, communal tenure accounted for the largest percentage of the landholdings in Nigeria before the advent of colonialism.

One of the cardinal principles of land management in pre-colonial Nigeria was that land belongs to all the people which may be held by individuals and or jointly (in southern Nigeria) by families or gandu (in northern Nigeria). The family head, normally the oldest man, was regarded as the administrator of land since it was he who allocated plots of family land. Such allocations were considered to belong to the individuals so granted for a life time since allotees had complete control over land. This was the situation in southern Nigeria.

In northern Nigeria, such land might revert to the gandu for redistribution to others. It must be noted, however, that during the pre-colonial period, it was most likely that there were no alienation of plots either by sale or mortgage. Of course, it should be noted that customary tenure did not forbid alienation of land. It did so by not providing for it since it was not needed as there was plenty of land and low population density. However, even if land was not directly saleable, it could be passed to others through a variety of ways, often with a profit. This is one of the often overlooked aspects of corporate holdings during this period.

While this system of land management still obtained in southern Nigeria, that of northern Nigeria was radically changed by the introduction of Islam on the existing system of land management, by the establishment of the Sokoto Caliphate. The enthronement of Islamic values following the establishment of the Sokoto Caliphate had implications for the system of land administration as we know it today. The general principle underlying Moslem land law is that land is a gift of God (Allah) and that each person has usufructuary right in it. The term usufructuary did not mean the same with the Roman law 'usufructuary.' In the Caliphate, it means any occupier of land has the right of 'access to land, a right to use and enjoy the products of the land and the right to prevent others from using it.

One way in which the customary system of land management was affected was through the emergence of new land ownership systems. Basically, five land types were introduced -

mamluka or land held in absolute ownership by individuals/groups; amiriyya or state land; matruka or common land; mawatoi dead (infertile) land or dajin Allah or God's bush; waqf or dedicated lands. These land categories notwithstanding, under the Islamic and tenure law in Nigeria, land can be divided into three legal categories occupied, unoccupied and common land. Occupied land is that land which is under use.

However acquired by the original acquisitor, the basic tenet of occupied land is that the occupier is free to deal with the land as he likes, subject to not causing any injury to members of the public and subject to acquisition for public purposes. Thus, he can sell, pledge or loan and enter into tenancy agreements without consent of the Emir or ruler or any authority. Unoccupied land, on the other hand, can be subdivided into two: land close to the emirate capital and/or other towns; and those far away from the capital or town. The Emir is the main land manager. Thus, one cannot occupy any land in towns or in their vicinity without first obtaining the consent of the Emir.

But once allocated, the person to whom it is allocated became the 'absolute owner'. According to Yakubu (1985), this means that the occupier has a title against all persons and he is free to use it the way he likes but cannot alienate it to a total stranger without the consent of the Emir. However, land which is far away from the town is free for all persons or a 'no man's land' where any person can acquire land by clearing, cultivating, building or planting of economic trees etc. without the consent of any authority. A third variant of land category, whether occupied or unoccupied land, is the waqf or common land, which an Emir can declare such land as common or public land. In the past, land gained from war, cession and treaty were excluded.

In present day Nigeria, such land includes small parcels of land used for markets, praying grounds or grazing land. In situations where such lands were occupied, the occupier was given another piece of land somewhere and compensation, where required, was paid. One other way in which the Islamic land tenure law is different from the existing law is that Islamic law does not recognize holding of land for a fixed tenure, at the expiration of which rights in the land lapse. For the efficient management of the extensive Sokoto Caliphate in general and land in particular, different kinds of taxes were introduced: zakkat or obligatory tax, Jizyah or tribute paid by subjugated people, al - kharaj or tax on farm produce or kudin -

al - barkar kasa. Two misconceptions on this system of land management have been cited in the literature.

One, according to Yakubu (1985), a tax or al-kharaj was paid for land which an individual occupied. But to Yakubu, the Hausa word for al- kharaj is Kudin -al - barkar kasa or money for land produce. Often, the middle word - al-barkarte omitted in both oral and written literature to leave kudin kasa or literally land money. Thus, tax was never paid on land per se but on produce of land. Secondly, there was also the misconception that Emirs had proprietary rights to land and were there- fore regarded as owners of land. Indeed, they had rights over inhabitants as distinct from rights over land. These misconceptions can be attributed either to linguistic problems or the lack of an understanding of the territorial system of land management under the Fulani administration. These misconceptions mostly arose during the colonial period.

Land Management in Colonial Nigeria

The colonial administration in southern Nigeria recognized the existing indigenous system of land management and administration. The colonial regime, however, made laws and super-imposed them on such existing systems (Adalemo 1993). For example, the Treaty of Cession of 1861 was signed by Oba Dosunmu of Lagos; but what Oba Dosunmu transferred were sovereign rights only, since property rights of individuals or inhabitants were not affected by the treaties. Thus, it was only the management of land that was transferred. The Native Lands Acquisition Proclamation of 1st January 1900 provided that with effect from 1st January, 1900:

> No person other than a Native shall either directly or indirectly acquire right in or over land within southern Nigeria from Natives without the written consent of the High Commissioner... Any such interest or right over land acquired without such consent shall be void. By 1906, the Crown Lands Management land. Proclamation was introduced. It was designed to the provide for the management, control and disposition of Crown Lands in the Protectorate of was Southern Nigeria. It provided that the High land Commissioner shall have the management authority of all that Crown Lands in the Protectorate; and that he may 'from time to time sell, lease, exchange or otherwise dispose of such lands as he may think fit. (Adalemo 1993).

Another important land legislation was the Native Lands Acquisition Ordinance of 1908. This ordinance sought to regulate the acquisition of land by aliens from the Natives. However, the 1908 Ordinance was repealed in 1917 by the Native Lands Acquisition Ordinance No 32 of 1917. This Ordinance provided amongst others that no alien should acquire any interest or rights in or over any land within the Protectorate from a native except under an instrument which has received the approval of the Governor. Any instrument which did not receive the approval of the Governor as required by the section was null and void. From the foregoing analysis, it is clear that the colonial level administration in southern Nigeria was mainly concerned with, and confined its administrative control to the alienation of land by natives to aliens or non natives.

In northern Nigeria, however, the system of land management took a different turn following the imposition of British colonial rule. It would be recalled that extension of British colonial administration over Hausaland occurred when the European powers were 'scrambling' for the possession of African territories. As an initial step, the British Government granted the Royal Niger Company a Royal Charter in 1886. This Company signed a number of treaties with local Chiefs and Emirs in northern Nigeria. However, upon the revocation of the Company's charter, the colonial government assumed direct control of the company's territory on January 1, 1900.

The company was duly compensated and in turn assigned to the British Government the benefits of all its treaties and land other than its trading stations, and all mining rights it had acquired. As Lugard (1906:30) stated:

> ... these lands are by presumption the absolute property of the Government, ... But in fairness to the company, it must be borne in mind that the treaties into which they claimed to have acquired these lands ... were often ... the same by which they had acquired such political control as formed the basis of our claim to what is northern Nigeria.

In addition to these lands, there were also Crown lands. These lands made up of the sites of the cantonments at Zungeru and Lokoja as well as the various provincial headquarters.

There were also 'public lands' which became the property of the Government by virtue of the fact that when the Fulani conquered an area, they assumed the ultimate title to all land in the

area; consequently when a Fulani chief was conquered or deposed by the British government, the title earlier vested in the conquered Emir passed on to the British Government. Public lands included those land that were occupied and those lands which were the property of the conquered or deposed ruler(s). The same rights of succession applied in respect of non-muslim territories or territories of Emirs not conquered or deposed. It is important to note the distinction between 'Crown' and 'Public' lands. While Crown lands were the private property of the Government and it assumed the management of such lands, 'Public lands' were left entirely at the free disposal of the natives to use and enjoy according to native custom.

The only restriction was that no native (like in southern Nigeria), could alienate land to a non- native without the consent of the High Commissioner. A major development during the colonial era was the Lands and Native Rights Proclamation of 1910. The origin of this proclamation was that Sir Percy Girouard, Lord Lugard's successor was opposed to the above Lugard's ideas on land and drew the attention of the Home Authority to the necessity of independent expert advise on such an important subject as land. This call led to the setting up of the Northern Nigeria Lands Committee of 1910. Its main terms of reference were: to consider the evidence collected by Sir Percy Girouard, and any other evidence available, as to the existing system of land tenure in northern Nigeria, and to report (1) on the system which is advisable to adopt (it) as to the legislative and administrative measures necessitated by its adoption (Northern Nigeria Lands Committee 1907: III).

The Committee issued its report on 29th July 1908. It was discussed and approved at both Houses of Parliament and embodied as the Land and Native Rights Proclamation No 9 of 1910. One of the most important proclamations, amongst others, was that 'all native lands and all rights over same are hereby declared to be under the control and subject to the disposition of the Governor and shall be held and administered for the use and common benefit of the natives.' This Proclamation had important ramifications. First, it led to the emergence of the state as a major accumulator of land either through expropriation or compulsory acquisition with or without compensation as is known today. Second, the Proclamation became a model for the then British West Africa and indeed was used as one in the setting up of the West African Lands Committee of 1912. Third, there was an attempt to apply aspects of the Proclamation to the Nigerian Land question' at the Privy Council in London in 1921; and finally it served as a model for the Northern Nigeria Lands Tenure Law of 1962.

Despite the pre-eminence of land tenure system in pre-colonial Nigeria, the establishment of the British colonial rule opened a new epoch in the history of land management in Nigeria. The country witnessed an unprecedented urban expansion so much so that modern Nigeria can be described as a colonial creation. However, the haphazard nature of the land management negated the goals of the colonial urban development. The most noticeable debilitating effect was the evolution of a segregated society resulting into polarization of Nigeria into two unequalled worlds (the small but regulated area and large unregulated ones). While reflecting on the inequalities that characterized the halves in most colonial cities in Africa (colonial world), Frantz Fanon (1983:29-30) observed:

> The colonial world is a world cut in to two-(the settler's zone-where Europeans and other foreigners lived and the native's zone, where indigenes resided; which is diametrically opposed to each other)….No conciliation is possible…The settler zone is strongly built, made of stone and steel; brightly lit; the streets are covered with asphalt…..The settler town is a well fed town, an easy going town; its belly is always full of good things….The part of the town belonging to the colonized people is a place of ill-fame, peopled by men of evil repute. They are born there, they die there….It is a world without spaciousness; men live there on top of each other….The native town is a hungry town, starved of bread, of meat, of shoes, of coal, of light. The native town is crouching village, a town on its kneels, a town wallowing in the mire….

In order to promote a deliberate policy of segregation, the British promulgated "The Townships Ordinance of 1917" (Falola, 1989:135).This was on two levels. The first was the division between indigenes of a town and Nigerians from other places (the so-called alien natives).The second segregated Europeans from Nigerians, irrespective of the status of the latter. Europeans lived in reservations where they have access to the best medical attention, security, adequate water supply, good road and other social amenities. With this arrangement, colonialism created racial segregation and invariably ethnic disaffection. It also fostered class consciousness which was anchored on the concept of modernization, especially among the few educated elite. These "civilized" few "felt that they were privileged to imitate Western culture and who also benefited from the colonial state began to see themselves as *olaju* (the civilized) to distinguish themselves from the *ara oko* (the rural, uncivilized), (Falola, 1989:221).As it would be demonstrated in this essay, this dual personality created in Nigeria by colonial urbanism led to a lot of enduring environmental injustices which shaped and

dampened the land management strategies and the general character and patterns of growth and development of Nigeria from colonial era, which subsist till the post colonial period.

Authoritarian Land Management System in Post Colonial Nigeria: The 1978 Land Use Act in Focus

Although several regulations were made by successive governments in the post independent period to manage land in Nigeria but none of such rules impacted so much on land management and control in all ramifications like the Land Use Act of 1978. The Act was originally promulgated as a decree in 1978 and annexed to the 1979 constitution on the eve of the military government handing power to elected politicians that year (Rhuks T Ako,2009). This section discusses the origin of the Act, explains its provisions and analyses the impacts of the Act on the regions of the country within an environmental justice framework.

Conception of the 1978 Land Use Act

The Land Use Decree (now Land Use Act) was promulgated on 29th of March 1978 following the recommendations of a minority report of a panel appointed by the Federal Military Government of the time to advice on future land policy. With immediate effect, it vested all land in each state of the Federation in the governor of that state (Fed. Rep. of Nigeria, 1978).The Act vests all land comprised in the territory of each state (except land vested in the Federal Government for its agencies) solely in the hands of the military governors of the state who would hold such land in trust for the people.

According to Rhuks (2009), the Act was promulgated in 1978 to nationalize all lands in the country, purportedly due to the increasing difficulty experienced by private and government institutions in acquiring land for development. The Third National Development Plan had noted that the difficulties experienced in land acquisition for development purposes were partly responsible for the failure to implement the Second National Development Plan (1970–74).Though legislation existed to empower governments to acquire land compulsorily for public purposes, it was observed in the Third National Development Plan that the cost was exorbitant in some of Nigeria's urban centres. Consequently, the federal government set up the Anti-Inflation Task Force in 1975 to examine existing inflationary tendencies in the economy and identify their causes. The task force recommended that the government initiate a comprehensive national policy on land and promulgate a decree to vest all land in the state

government. The federal government rejected the report and set up a rent panel in 1977 to investigate and make recommendations on the persistent difficulties in land acquisition for development purposes, as well as the incidence of high rents demanded by property developers.

The panel recommended that a land reform commission be established to study the various aspects of Nigerian land tenure systems and make recommendations to the federal government on the necessary steps to streamline them. At this time, the country was undergoing the preliminary stages of returning to democratic governance. The constitution drafting committee that had already been inaugurated to draft and recommend a constitution for the country suggested that all undeveloped land in the country be nationalized. The federal military government inaugurated the Land Use Panel on 20 May 1977 to review Nigeria's land tenure system. The panel was mandated:

> (i) to undertake an in-depth study of the various land tenure, land use and conservation practices in the country and recommend steps to be taken to streamline them;
>
> (ii) to study and analyse the implications on a uniform land policy for the country, as well as examine the feasibility of a uniform land policy for the entire country and make necessary recommendations and propose guidelines for their implementation; and
>
> (iii) to examine steps necessary for controlling future land use and also opening and developing new lands for the needs of the Government and Nigeria's ever growing population in both urban and rural areas, and make appropriate recommendations.(Federal Government of Nigeria,1977).

After it began to sit in 1978, the panel submitted both a majority report and a minority report to the federal military government. While the majority report advised explicitly against either the nationalization of land or the extension of the land tenure system of the northern states to

the whole country, the minority report recommended that land be nationalized. It based its recommendation on the grounds that "the idea of Government being the custodian of land [as] in the Northern States is germane and should remain the acceptable base for land use".32 The federal military government accepted the recommendation of the minority report and promulgated the Land Use Decree no 6 of 1978 which in effect extended the law of "public ownership" of land hitherto practised in northern Nigerian to the whole of the federation through its stipulated provisions.

Provisions, Operations and Objectives of the Act

The promulgation of this Act was as a result of two main factors: First, was the diversity of customary laws on land tenure and difficulty in applying the various customs of the different people. The second factor was the rampant practice in southern Nigeria with regards to fraudulent sales of land. The same land would be sold to different persons at the same time giving rise to so many litigations. The Act distinguishes throughout between urban and non-urban (rural) land. In urban areas (to be so designated by the Governor of a state), land was to come under the control and management of the Governor. In rural areas it was to fall under the appropriate local government.

At the operational level, the Governor appointed Land Use and Allocation Committees for each state with the basic function of advising the government on the administration of land in urban areas. Land Allocation Advisory Committees were also appointed to exercise equivalent functions in the rural areas. The Act equally envisaged that "rights of occupancy", which were to replace all previous system or rules of inheritance to land and form the basis upon which land was to be held. These rights were of two kinds: statutory and customary. While Statutory rights of occupancy were to be granted by the Governor and related principally to urban areas; Customary right of occupancy, according to the Act, means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by Local Government under this Act.

Local governments were empowered to grant customary rights of occupancy to any person or organisation for agricultural, residential and other purposes with the proviso that grants of land for agricultural or grazing purposes should not exceed 500 or 5000 hectares respectively

without the consent of the State Governor. With the minor exception of land subject to Federal or State claims, the Act also empowered the local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction and to revoke any customary right of occupancy on any such land. The approval of the local government was to be required for the holder of a customary right of occupancy to alienate that right.

The Act prohibits the alienation by assignment, mortgage, transfer or possession, sub-lease or otherwise, of customary right of occupancy without the consent of either the Governor or the Local Government as the case may be. It also prohibits the alienation of statutory right of occupancy without the due consent of the Governor (Land Use Act, 1978: section 21 subsections a and b). Governors were empowered to revoke rights of occupancy for reasons of "overriding public interest." Such reasons included alienation by an occupier without requisite consent or approval; a breach of the conditions governing occupancy; or the requirement of the land by Federal, State, or local government for public purposes. Only in the last of these cases would any compensation be due to the holder, and then only for the value of unexhausted improvements on the land and not for the land itself.
The four main purported objectives of the Act include:

1. to effect structural change in the system of land tenure;
2. to achieve fast economic and social transformation;
3. to negate economic inequality caused by the appropriation of rising land values by land speculators and land holders; and
4. to make land available easily and cheaply, to both the government and private individual developers.

The Impact of the Act

Expectedly, scholars are sharply polarized along two basic schools of thought regarding the real impacts of the land use Act on the people. The supporters anchor their argument on the purported positive influence of the Act on economic development of the country and the shortcomings of existing land management regulations. To them, land management under the Land Use Act has provided an appropriate enabling environment for prospective investors, private individuals and other corporate bodies. This economic school of thought about land tenure in Nigeria began to gain momentum with political independence and the opening of

the global debate on economic development. While Lloyd (1962) submitted that his research on land tenure was occasioned 'by a realization that ignorance of the law had been seriously handicapping the commercial development of Western Nigeria'; Adegboye (1967) argued in a much more radical vein that 'any society seeking land reform must make a choice between economic efficiency and retention of traditional ties and institutions'. In the 1960s a number of Nigerian agricultural economists began to argue that customary forms of land tenure suffered from 'defects and inconsistencies' (Famoriyo, 1973a: 3) that militated against the most rational economic use of land. Examples of other literatures on the shortcomings of customary forms of tenure include (Adegboye, 1964; 1967.; Adeniyi, 1972a; 1972b; Fabiyi, 1974; Famoriyo, 1972; 1973a; 1973b; 1979; Ijaodola, 1970; Olatunbosun, 1975; Oluwasanmi, 1966; Osuntogun, 1976; Wells, 1974; Williams, 1978).

Adegboye (1967) identified the defects in land tenure, farm tenancy and the provision of agricultural credit as obstacles to increasing productivity per acre and per farmer. With regard to land tenure he stated that: 'the present structure of land tenure makes it virtually impossible for enterprising young farmers to mobilise their labour and capital as freely as they would like to' (p.340). This is so, we are told, because sales of land are rare, and thus the cultivator and his descendants are confined to family land, and because the division of land upon inheritance leads to holdings becoming uneconomic in size and productivity. The defects of customary farm tenancy are enumerated as follows: the terms of leases are often verbal and indefinite; the amount of tribute paid is governed more by the tenant's relationship to his landlord than by the fertility or location of the land; subleasing is common in some areas; and the tenant is sometimes forbidden to plant permanent crops. Overall, the tenant's insecure position discourages him from making substantial investments of capital or labour in the land which he occupies. The principal problem with regard to agricultural credit is also held to stem from customary land tenure: 'A piece of land which is communally owned cannot be used for collateral' and thus the commercial banks do not lend to farmers (Adegboye,1967: 340).In order to take care of the inadequacies of traditional forms of tenure, these scholars supported total control of all land by the Government; thereby prepared the ideological basis for the eventual promulgation of the Land Use Act in 1978.

The negative impact of the Act which borders primarily on erosion of principles of environmental justice may be categorized in two broad areas. The first relates to the general or national effects of the Act, while the second consists of its peculiar effects on the regions.

At the national level, it is also important to state that the general effect of the Act was to vest absolute ownership of land in each state in the state governor. In Abioye v Yakubu, the court held that the effects of the Act on customary land-holding included the:

"(1) removal of the radical title in land from individual Nigerians, families, and communities and vesting the same in the governor of each state of the federation in trust for the use and benefit of all Nigerians (leaving individuals, etc, with 'rights of occupancy'); and
(2) removal of the control and management of lands from family and community
Heads-chiefs and vesting the same in the governors of each state of the federation (in the case of urban lands) and in the appropriate local government (in the case of rural lands)". (Rhuks T Ako,2009) Governors are also empowered to revoke rights of occupancy for reasons of 'overriding public interest.' Such reasons included alienation by an occupier without requisite consent or approval; a breach of the conditions governing occupancy; or the requirement of the land by Federal, State, or local government for public purposes. Only in the last of these cases would any compensation be due to the holder, and then only for the value of 'unexhausted improvements' on the land and not for the land itself.

Related to the above problems include the lack of adequate compensation and the inability of smallholders to increase the size of their holdings, the perception of the Act by southerners as an overt political extension to the south of the Land Tenure Law of 1962 and the State Land Law of 1915 which applied to the north, and the absolute power given to the governor of each state, even to the detriment of the Federal Government. Furthermore, adequate administrative and enforcement agencies were not provided (Arua, 1980) and a national cadastral survey and effective registration instruments were omitted. The absence of an effective policy on optimum land use that takes into account ecological variation is also a visible defect of the Decree.

With regard to continued validity of customary forms of tenure, transfer and lease in the rural areas, the Act left two key areas of ambiguity. The first was the question of the capacity of the holders of customary rights to land to alienate those rights. While the Act defines customary rights of occupation to include 'the right of a person or community lawfully using or occupying land in accordance with customary law' and the transitional provisions of the Decree make the registration of such rights with local authorities optional, several other

sections of the Decree either state or imply that the alienation of customary rights without the approval of the appropriate local government is illegal. The pronouncements of the executive on the purposes of the Decree were contradictory and did little to clarify the question.

The second key area of ambiguity with regard to rural land tenure was whether concurrent claims in rural land persisted after the enactment of the new law. No part of the Act expressly abolished or outlawed the payment of rent in respect of customary tenures in land, but while the validity of mortgages and other encumbrances on urban land was explicitly reserved, this was not so for rural land. On the issue of collateral claims in rural land, however, the statements of the administration were consistent; there was no longer any obligation to pay ground rent in respect of rural lands after the Decree.

In order to articulate the peculiar environmental injustice of the Act across regions of the country, this paper will focus on the particular effect on the indigenes of the Niger Delta region. According to Rhuks T Ako,(2009), one consequence was the escalation of violent conflicts in the region. There is also a negative impact on the economic planning by the oil companies and the global economy that relies extensively on the supply and pricing of oil.
As Fekumor noted, because of the Act, "the people have become antagonistic …they have been deprived of their main stay, and yet the damage is not paid for. Because they are not adequately compensated, the slightest misunderstanding is conflict" (CRP,1999). According to Ojo (2002), the reasons for the pervasive violence include the "the decision of hitherto voiceless, subordinate and under-privileged minority groups to take up the gauntlet and challenge state structures and institutions controlled by majority groups who have been grossly unjust over time in the distribution of national resources".

In summary, the Act legitimized the appropriation of land in the region. Section 28 provides that land may be appropriated for "overriding public interests" defined to include "the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith". In essence, the inhabitants of the region may be dispossessed of their land whenever their land is required for oil exploration, making them tenants-at-will of the oil industry on land they have owned and inhabited for centuries. The Act thus complemented and completed the intent of previous legislation to grant the federal government exclusive ownership and control of oil resources (Nigeria Constitution,1999). Though Ayodele-

Akaakar (2006) opines that the assumption of ownership reached its full scale with the promulgation of the Offshore Oil Revenue Decree in 1971, Rhuk (2009) contended that it is the Act that really completed the federal government's ownership and control of the oil industry.

The impact of the Offshore Oil Revenue Decree merely abrogated the rights of the regions (states) to the minerals in their continental shelves. It vested the title to the territorial waters and continental shelf, as well as royalties, rents and other revenues derived from petroleum operations, in the federal government.37 In practice, the decree did not preclude the oil communities from having enforceable rights to participate in the oil industry because they owned the land underneath which the oil was exploited. Before the promulgation of the Act, even though ownership of the oil was vested absolutely in the federal government, the communities owned the land beneath which the resource was situated. Therefore, they had to be consulted before oil operations began on that land. However, after the Act became effective, the region's inhabitants were stripped of this right and the federal government became vested with the sole right to determine where and when oil operations could be undertaken. In addition to depriving the host communities of certainty in landholding rights, the Act was instrumental in depriving these communities from owning land within the region. Land in the oil-rich region was appropriated for the benefit of oil companies, government officials and their cronies to the detriment of the original (traditional) landholders. The Act also eroded the authority of traditional rulers (elders) that is intrinsically linked to land as evidenced by customary land tenure practices, whereby the power to manage and control the use of land is vested in the community leader.A major consequence includes the inability of traditional authority to mediate effectively and resolve land-related disputes in the region. The role of traditional authority in the administration of justice in land-related matters is particularly important in the region where there are disputes between individuals, families and oil companies literally daily.

Conclusion

Despite the huge criticisms that have continued to trail of the Land Use Act from inception till today, the Act (with its annexation into the Nigerian Constitution) seemed to have come to stay. Therefore, we can only suggest some ways to amend the basic anti-people's provisions

within its framework in order to incorporate crucial elements of environmental justice. The primary aim is to establish an efficient system of land management through effective legal, institutional and technical frameworks.

First, there is the urgent need for the recruitment and training of land surveyors, town planners and other technical staff, all of whom are in short supply both at the Federal, State and Local Government levels to enforce the existing building, urban and regional planning regulations as provided for by the Urban and Regional Planning Act of 1992. Second, there is the need for a survey of property boundaries as well as the provision of cadastral maps. Finally, the Federal Government should commission, without further delay, the registration of title to land with a view to keeping a land register which should be available at Federal, State and Local Government levels. With recent advancements in the use of satellite imagery, Geographical Information System (GIS), as well as Geographical Positioning System (GPS), the issue of land registration should not be that difficult except, of course, the cost.

Lastly,As Ako (2009) has previously argued the Land Use Act was promulgated and remains in force because the indigenes of the oil-rich Niger Delta region that bear the brunt of its adverse effects are incapable of bringing forth a peaceful change to the status quo. As a corollary, this essay aligns itself with the Rhuks T Ako's suggestion that the legislative framework regulating the oil industry must be reviewed with particular attention to the offensive Act. Sections of the Act that deprive inhabitants of environmental justice must be reviewed with due consideration to the realities of the circumstances prevalent in the region. The goal of such a review should be to achieve equality, equity and justice among the citizenry, without subjugating one less privileged group to others. In order to stem the tide of incessant violence in the area, Nigeria's environmental legal regime must "give voice to the voiceless". As highlighted by Ako, 2009, issues of environmental justice should form the core of reforms in the oil industry which will ensure positive/collaborative participation of host community in the oil industry: review the existing state's power and authority (that are hitherto the exclusive preserve of the "majority" ethnic groups), in favour of the oil-rich Niger Delta region and other disadvantaged people across regions in the country. Before the oil industry will be beneficial to all stakeholders (local and global, it is also imperative that conflicts are effectively prevented and managed before the situation gets worse. Over all, the role of other laws and the Land Use Act in depriving the inhabitants of the Niger Delta

region(and other disadvantaged groups across other regions) of environmental justice and must be positively reviewed to stop the endemic deprivation among the poorest of the poor and stem the tide of avoidable conflicts in the country.

Bibliography

Adedeji,A. and R Ako "Hindrances to Effective Legal Response to the Problem of Environmental Degradation in the Niger Delta" (2005) 5=1 *UNIZIK Law Journal* 415 at 415–39.

Adegboye, R O., *Land Tenure in Some Parts of West Africa*, Department of Agricultural Economics and Extension, University of Ibadan, Ibadan.

Adegboye R O. 1964, "Improving Land Use in Nigeria Through Defects in Land Inheritance" Ph.D. dissertation, Iowa State University.

Adegboye, R O. 1966, "Farm Tenancy in Western Nigeria" *Econ. Soc. Studies* 8(3): 441–53.

Adegboye, R O. 1967 "The Need for Land Reform in Nigeria" *Econ. Soc. Studies* 9(4): 339–50.

Adeniyi, E O.1972b, "Land Tenure as a Socio-Cultural Factor in Rural Development in the Middle belt of Nigeria," Proceedings of the 1972 Annual Conference of the Nigerian Economic Society.

Adeniyi E O. 1972a, "Land tenure and agricultural development in Nupeland," *Niger. Geogr. Journal*. 15(1): 49–59.

Arua, E.O. 1978, The Money Economy Illusion in Two Rural Areas of Nigeria and the revolutionary way out for the nation. Beitr. Trop. Landwirtsch. Veterinärmed., 16(4): 361-369.

Arua, E.O. 1979, "Relationship of man to land in Nigeria," Beitr. Trop. Landwirtsch. Veterinärmed., 17(3): 227-237.

Arua, E.O. 1980, Some aspects of land reform and implementation policy in Nigeria," *Agric. Admin*, (UK), 7(3): 211-219.

Arua, E.O. 1981a. Using the Land Use Decree 1978 as a policy guideline in developing farmers' cooperatives in Nigeria, Chapter 7, in U.M. Igbozurike, ed. *Land use and conservation in Nigeria,* Nsukka, Nigeria, University of Nigeria Press.

Arua, E.O. 1981b, "Yam ceremonies and values of Ohafia culture" *Africa* (London), 51(2): 694-705.

Arua, E.O. 1982, "Poverty, Landlessness and Agricultural Productivity in Nigeria," Beitr. Trop. Landwirtsch. Veterinärmed., 2(3).

Binswanger, H. & Rosenzweig, M. 1986. Behavioral and Material Determinants of Production Relations in Agriculture. J. Devel. Stud., 22: 523-529.

Bishop, C.E. & Toussaint, W.D. 1958, *Introduction to Agricultural Economic Analysis*, New York, USA, John Wiley.

Bohannan, P. 1966, *Land Tenure in African Agrarian Systems*, London, Oxford University Press.

Chubb, L.T. 1961, *Iboland Tenure*, Ibadan, Nigeria, University Press.

Constitutional Rights Project (CRP) Land, Oil and Human Rights in Nigeria's Delta Region (1999, CRP) at 15–16

Fabiyi Y L. 1974, Land tenure innovations in rural development: The problems in Western Nigeria with some Tanzanian Comparisons, PhD Dissertation, University of Wisconsin.

Fabiyi Y L. 1984. Land Administration in Nigeria: Case Studies of the Implementation of the Land Use Decree (Act) in Ogun, Ondo and Oyo States of Nigeria, *Agric Admin*, 17: 21–31.

Fabiyi, Y.L. and Adegboye, R.O. 1977, The Perception of Land Tenure Among Young Farmers Aged 30 and under in Oyo and Imo States of Nigeria: Implications for Agricultural Development. Ife-Ife, Nigeria, Dept. of Agricultural Economics, University of Ife. (Unpublished manuscript, mimeo)

Fabiyi, Y.L. 1983. Land administration in Nigeria: case studies of the implementation of the Land Use Decree in Ogun, Ondo and Oyo States. Ife-Ife, Nigeria, University of Ife.

Famoriyo S. 1972. Elements in Developing Land Tenure Policies for Nigeria, Q. J. Admin. 7(1): 55–57.

Famoriyo S. 1973a "Some problems of the customary land tenure systems in Nigeria," *Land Reform, Land Settlement and Cooperatives* 2: 1–11.

Famoriyo S. 1973b, "Land tenure and Food Production in Nigeria," *Land Tenure Centre Newsletter*, 41: 10–15.

Famoriyo S. 1979, *Land Tenure and Agricultural Development in Nigeria*, Nigerian Institute of Social and Economic Research, (NISER) Ibadan, Nigeria.

Famoriyo, S. 1973, "Land Tenure and Food Production," *Land Tenure Center Newsletter* ,No. 41. University of Wisconsin, Madison, USA.

Famoriyo, S. 1975, *Land Tenure Studies in Egba and Ondo areas of Southern Nigeria*, NISER Monograph No. 127. University of Ibadan, Nigeria. 29

Famoriyo, S. 1980, " Land Tenure Systems and Small Farmers in Nigeria" in S.O. Oludipe, J.A. Emeka and V.E. Bello-Osagie, eds. *Nigeria – Small Farmers Problems and Prospects in Integrated Rural Development*, pp 115-132, Ibadan CARD, University of Ibadan, Ibadan, Nigeria.

FAO 1953a, "Communal Land Tenure," by G. Clauson, *FAO Land Tenure Study* No. 17, p. 1-18. Rome.

FAO, 1953b, "Interrelationship between agrarian reform and agricultural development," by E.H. Jacoby, *FAO Agricultural Studies*, No. 26. Rome.

FAO, 1983, "Some problems of the customary land tenure systems in Nigeria," by S. Famoriyo. *Land Reform, Land Settlement and Cooperatives* No. 2. Rome.

Federal Ministry of Economic Development, 1975, *Third National Development Plan*, 1975–80. Vol. 1. Lagos, Nigeria.

Federal Office of Statistics, 1976, *Rural Economic Survey of Nigeria*, 1973/74,Lagos.

Federal Office of Statistics, 1980, Nigerian rural economic survey: a report on land tenure enquiries, 976-1979. Lagos.

Federal Republic of Nigeria, 1978, *Land Use Decree*,No 6 of 1978.

Francis P A. 1984, "For the Use and Common Benefit of all Nigerians: Consequences of the 1978 and nationalisation," *Africa* 54(3):5–28.

Igbozurike, U.M., 1980, Nigerian land policy: An analysis of the Land Use Decree, Department of Geography, University of Nigeria, Nsukka, Nigeria.

Ijaodola J O., 1970, "The creation of states on Nigeria: An opportunity for amending the law of land tenure in the former Northern Region," *Law in Society* 4: 1–12.

Ijere, M.O., 1972, "The need for land reform in East Central State," in M.O. Ijere, ed. *Prelude to the Green Revolution in East Central State of Nigeria*, 194-197. Enugu, Nwamife Publishers Ltd.

Johnson, D.T., 1982, *The Business of Farming: a guide to business Management in the Tropics,* London, Macmillan.

Lloyd P C., 1962, *Yoruba Land Law*, London,Oxford University Press.

Malinowski, B., 1935, "Soil tilling and Agricultural rites in the Trobriand Islands: Coral gardens and their magic, Vol. 1. London, Allen and Unwin.

Meek, C.K., 1957, "Land tenure and administration in Nigeria and the Cameroons," *Colonial Research Studies* No. 22, London, HMSO.

Menkiti, G.A., 1972, "Land tenure and its role in agricultural development in East Central State," in M.O. Ijere, ed. *Prelude to the green revolution in East Central State of Nigeria,* Enugu, Nigeria, Nwamife Publishers Ltd.

Migot-Adholla, S., Hazell, P., Blaret, B and Place, F. 1991, "Indigenous land rights systems in sub-Saharan Africa: a constraint on productivity," *World Bank Econ. Review* 5(1): 155-175.

Ministry of Economic Development, 1970, *Second National Development Plan*, Lagos, Nigeria.

Nwabueze,G. "Contextualizing the Niger Delta crisis" (1999) 6-2 Centre for Advanced Social Science Newsletter 2 at 2.

Nzimiro, I. 1973, *Capitalism and land tenure in Igbo land*, Dakar, African Institute for Economic Development and Planning.

Ojo,J., The Niger Delta: Managing Resources And Conflicts (research report no 49) (2002, Development Policy Centre) at 8.

Okpala I., 1978, *The Land Use Decree of 1978: If the past should be prologue...*! Nigerian Institute of Social and Economic Research, Reprint series no. 119.

Olatunbosun D., 1975, *Nigeria's Neglected Rural Majority*, Ibadan, Oxford University Press for Nigerian Institute of Social and Economic Research, Ibadan.

Oluwasami, H.A. 1966, *Agriculture and Nigerian Economic Development*, Ibadan, Oxford University Press.

Oluwasanmi H A., 1966 *Agriculture and Nigerian Economic Development*, Ibadan, Oxford University Press.

Omotola, J A., 1983, *Cases on the Land Use Act*, Lagos, Lagos University Press.

Omotola, J A. 1984, *Essays on the Land Use Act*, 1978, Ibadan, Lagos University Press.

Osuntogun A. (ed.) 1976. Institutional Determinants and Constraints on Agricultural Development: Case Studies from the Western States of Nigeria. University of Reading/ ODI joint programme on agricultural development overseas.

Poguchi, H.J.R. 1962. The main principles of rural land tenure in agriculture and land use in Ghana, edited by B.J. Wills. Oxford University Press, Accra.

Rhuks T Ako, "Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice" *Journal of African Law*, 53, 2 (2009), 289–304 © School of Oriental and African Studies, United Kingdom

Smock, S., 1965, Agricultural development and community plantations in eastern Nigeria, Ford Foundation Rural Development Project, Lagos.

Timmons, F., 1943, "Land tenure Policy goals," J. Land and Public Utility Econ., 19: 165-179.

Uchendu V C., 1979, "State, land and society in Nigeria: a critical assessment of Land Use Decree (1978)," *Journal of African Studies* 6(2): 62–74.

Udo R K., 1985, The Land Use Decree 1978 and its antecedents, University of Ibadan, 1985 University Lecture Series.

Wells J C., 1974, *Agricultural Policy and Economic Growth in Nigeria*, 1962–1968, Ibadan, Oxford University Press for Nigerian Institute of Social and Economic Research.