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What is customary land tenure?

Tenure means landholding. Customary land tenure refers to the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer. Unlike introduced landholding regimes, the norms of customary tenure derive from and are sustained by the community itself rather than the state or state law (statutory land tenure). Although the rules which a particular local community follows are known as customary law, they are rarely binding beyond that community. Customary land tenure is as much a social system as a legal code and from the former obtains its enormous resilience, continuity, and flexibility. Of critical importance to modern customary landholders is how far national law supports the land rights it delivers and the norms operated to sustain these. This is a main subject of these Brief. Another term for customary land tenure is indigenous tenure. This is contested in Africa because, although all Africans are indigenous to the continent.

NIGERIAN LAND TENURE

The learned justice of appeal concluded that person possesses or occupies a definite piece of land lawfully. "These statements of the law with respect to section 36 as interpreted are clearly correct: a customary tenant is the one entitled to the customary right of occupancy under this provision, provided that at the commencement of the Act, (a) he was in actual possession of the land, and (b) he was using the land for agricultural purposes. Such a customary tenant qualifies as "occupier" under section 36(2), lawfully occupying and using the land under customary law. The interpretation of section 36(4) of the Act, however, has not yet been rid of controversy. This section provides: Where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the

holder of the land was the holder of a customary right of occupancy issued by the Local Government, and if the holder or occupier ... at his discretion, produces a sketch or diagram showing the area of the land ... the Local Government shall if satisfied that that person immediately before the commencement of this Act has the land vested in him register the holder or occupier as one in respect of whom a customary right of occupancy has been granted

Land tenure In Bauchi state Nigeria

In Nigeria, there are different levels of land—holding, some of which co—exist: there is the Government level, the community level, the family level and the individual level. Land—holding varies to some extent from one ethnic group to another. In such ethnic groups as Birom and Irigwe in Plateau State, and the sayawa people in Bauchi state village communities ‘own’ land. The claims of original ownership by communities are based on the early settlement of groups of related families in a given area. Encroachment on another community’s land-holding results in disputes. In the village community, authority over land rests with the village head and his council of elders, or with the elders where no chief is recognized. In much of traditional Nigerian society, individual male members of the community, together with their immediate family, are allocated temporary usufructuary rights over land by the village head and/or the elders.

Land held according to traditional practice may change hands in different ways, such as pledge, loan, exchange or sale. Private land ownership is becoming very important nowadays. Thus, while community land-holding is still strong in some areas, it has been curtailed in others. This is all the more so with increased population pressure on land, which enhances the importance of private tenure and decreases the importance of community rights. As we shall see, this new trend has serious consequences for pastoralists’ access to grazing land.

Land law tenure system in Northern Nigeria:

When the Hausa rulers were conquered in the early 19th century by the Fulani religious invaders under Usman dan Fodio, the Sultan of Sokoto became the head of the Fulani empire and the owner of all Hausa lands and others conquered by them. Land

tenure was organized according to Maliki Islamic laws of inheritance. Essentially, it made land the property of the state which alone could grant right of use and could at any time withdraw or revoke such rights. When the British occupied the Fulani empire, it removed absolute land ownership from the Sultan and abolished all fief holdings and slave villages. To further maintain a firm grip on land, the British proclaimed the land and native right law No. 9 of 1910. This law made all land in northern Nigeria property of the Government which had to give consent before granting a right to occupy and use land.

Current Issues in Land Ownership in Nigeria

A land ownership system which restricts the citizens' right to occupy land, buy, let or sell their land

without obtaining the consent and approval of their Governors as provided in Sections 21 and 22 of Nigeria's

Land Use Act is anti-people and oppressive and cannot enhance sustainable development in any egalitarian

society. Undoubtedly, the Act has also hindered the effective functioning and operation of the property markets

in the country. By virtue of Section 1 of the Act, individuals cannot own freehold interest in land in Nigeria.

Individuals can only be granted a right of occupancy for a maximum holding period of 99 years, subject to

payment of ground rent to the government as fixed by the Governor. This has made private land ownership in the

country insecure. It has also affected the efficiency of the property markets.

In Conclusion .

The land ownership system in pre-colonial Nigeria was communal. Land was deemed not owned by

individuals but by communities and families in trust for all the family members. The legal estate under

customary land tenancy is vested in the family or community as a unit.