

# Questioning The Applicability Of The Perspectives Explaining Changes In Customary Land Tenure Systems In Nigeria

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*Abstract: The idea behind this paper is to understand the appropriateness or otherwise of the assumptions or arguments of the theories that explain changes in land tenure systems in Africa and to see whether these arguments can be applicable in Nigeria. The paper has shown that changes in land tenure systems in Africa and Nigeria in particular are affected by a multiplicity of macro and micro factors. Whereas the macro factors have often created broad contexts for development, the micro factors have affected particular elements of the system. This is the vital connection most of the theories explaining changes in land tenure systems have failed to capture. The paper has thus maintained that explaining changes in land tenure institution on the basis of single variables is not adequate because the system of land tenure is generally affected by a set of interconnected variables all of them interacting and influencing each other within the system. The paper has thus suggested the drivers of change model as an alternative perspective to explain change in land tenure systems in Nigeria considering the multiplicity of factors driving the change.*

**Keywords:** *Applicability, Perspective, Change, Land tenure*

## I. INTRODUCTION

In all societies, there are rules that govern rights to land and its resources. For instance, there are rules that dictate how land is owned, used and transferred. These rules are generally determined by the society's system of land tenure. Land tenure lacks a precise definition because of its complex and multidimensional nature. However, in simple terms, it means the rights which individuals or groups hold in land and its resources. It is the rules that regulate how land is owned, used and transferred.

In rural economy like Nigeria, it is the household and individuals that make the decision to use the land. However, household and individual decision-making in the use of the agricultural land are influenced by the land tenure system. It is a tenure system that determines how a portion of land is held and used. It is a tenure system that regulates people's rights and obligations in relation to land including any conditions and time limits to the use of the land (Baye, 2007).

In African societies, land is believed to be communally owned. The way land is held, distributed and made use of

reflects the social organization of the society (Ega, 1986). The compound, clan or lineage has rights to the control, use and disposal of land. In African societies therefore, land is a cohesive force that unites the people together (Famoriyo, 1979). People are linked to land through their memberships of groups. It is their group standing which gives them access to land (Mends and de Meijere, 2006).

Though very important, land is generally fixed in nature and because of its finite nature coupled with its changing value due to demographic, commercialization of agriculture, and other social influences, the rules that govern land and its resources have continued to undergo several changes. In Nigeria, where agriculture is the mainstay of the economy, changes in land tenure systems have become common. For example, in many Nigerian communities, the conception of land has shifted from communal ownership to private ownership. Especially, there have been significant changes in the routes of accessing land.

Scholars have therefore tried to explain these changes under varying narratives. For example, the evolutionary theories of landholding make a number of common

assumptions about the transformation while the neoclassical prescriptions are generally seen as an attempt to provide cure for African agrarian crises. The idea behind this paper therefore, is to review and understand the appropriateness or otherwise of the assumptions or arguments of these narratives concerning changes in customary land tenure systems and to suggest what I believe could be the most appropriate theory that could explain changes in the customary land tenure systems in Nigeria and indeed, Africa in general.

## II. THE NEOCLASSICAL ECONOMIC THEORY

The major proponents of this theory include Johnson (1972) and Barrows and Roth (1990). The theory sees land as an important factor of production and has guided policy formulation in many parts of the world (Dadzie, 2007).

The basic argument of the theory is that it is the market forces that efficiently allocate land to the best uses. Therefore, market forces should prevail to ensure efficient use of land. Neoclassical economic theorists thus postulates that for efficient allocation of land, (a) rights to the land must be clearly defined to avoid increases in transaction costs; (b) cost and rewards must be internalized by individuals so that they can combine the other factors of production with land in a way that will maximize rewards and minimize costs. Neoclassical economic theorists believe that when land is communally owned, costs and rewards are not internalized because there are no incentives for the maximization of marginal benefits (Johnson, 1972 cited in Dadzie, 2007); (c) if land transfers, through market exchanges, are inhibited, then investment will decrease through both demand and supply effect due to increased uncertainty and costs. Therefore, the creation of free titles will reduce the transaction costs associated with land transfers (Ault and Rutman, 1979). The titles will, in effect, create a market for land when it is scarce and when the private gains from exchange are greater than the costs of transfers.

Neoclassicals thus believe that contracts in the land market will allow for the realization of these gains which will then lead to a higher marginal value product and bid land away from less productive uses. Those who can most efficiently use the land are those who will engage in the bidding process and eventually use land in conjunction with other factors of production in order to create the greatest benefit. The theory thus maintains that individualization of land increases tenure security reduces costs such as litigations over land disputes and allows users of the land to maximize benefits. Also, individualization of land increases investment opportunities as land markets emerge to efficiently allocate for production.

Neoclassical arguments have led to the formulation of land policies in Nigeria, Zimbabwe, Kenya, Uganda, etc. In Nigeria for instance, policies such as the land development schemes and the Land Use Act, 1978 have been formulated in line with these policy prescriptions. Though plausible, the arguments are not particularly suitable for Nigeria. By emphasizing that property rights be clearly defined implies that property rights which are traditionally held collectively be fragmented or converted to free-hold (Dadzie, 2007). In Nigeria, lands are communally owned by clans, villages and

are therefore difficult for an individual to claim it. This communal ownership helps to avoid the incidence of landlessness. Fragmenting rights therefore means that the ability of traditional systems to ensure that all members of the family have access to land will be undermined.

Furthermore, in Nigeria, there are no more virgin lands to be colonized. This means that fragmentation of rights will engender clashes of interests as it will lead to land grabbing and exacerbate land disputes. More so, looking at the way the Nigerian society is structured, the elite group will assert claims over land which was not theirs under customary law. In this way, the smallholder farmers who are the most vulnerable will lose their rights over land (Ega, 1986). Experience has already shown that land policies formulated within the neoclassical tradition have had severe negative effect on farmers. For instance, the land development scheme which was designed to overcome the problem of fragmentation of land by consolidating land rather created problems of insecurity for the farmers. The schemes facilitated the transfer of land from the poor peasants to the rich and absentee farmers; from those who need land for subsistence to those in search of profits from agriculture

Similarly, the Land Use Act, (1978) designed to facilitate access to land has rather created injustice and insecurity to land property (Ega, 1986). For example, the Act recognizes private property as the only legitimate principle of tenure in Nigeria. Hence, it has taken over proprietary rights in land and vested only usufruct rights in individuals. It allows compulsory acquisition of land previously held by individuals to private property. This compulsory acquisition has rather being facilitating the dispossession of rural farmers of their land. Defining property rights or converting them into freehold in a society like Nigeria where the social structure is highly skewed will therefore benefit only the rich and powerful while the poor will be made landless.

## III. INSTITUTIONAL PERSPECTIVE

The starting assumption of the perspective is that institutions that exist within a culture play significant roles in the dynamics of that society. It maintains that in all cultures, land tenure systems possess both instrumental and ceremonial aspects which are verified within their logics.

Advocates of the institutional approach see land as part of the factors of production along with machines and energy. They argue that when land is combined with energy and machines, it can be cultivated for feeding the community and thus contribute to life process. This is an instrumental logic because without the cultivation of land no society can exist (Dadzie, 2007).

According to Diamond (2005), societies are deeply interconnected with the environment especially land and they adapt to changes in land for survival. Advocates of the institutional approach thus identify the ceremonial aspects of land as legends, myths and stories that govern the use of land. These ceremonies are deeply entrenched within a culture. They therefore see land tenure systems as part of the ceremonial aspects of land since they govern the ways land is passed down through kinship relations, how it is willed to

other members and its role in relation to the prosperity code of the society. Consequently, tenure systems can affect who gets the land after the death of an individual, the current holders of the land and under which conditions it is sold. Therefore, security of tenure is closely linked to the inheritance and succession laws of the society (Bentsi-Enchill, 1965). Myths, legends and traditions within an institution of land tenure can control the security of tenure.

This theory can be said to be a reaction to the arguments advanced by the neoclassical economic theorists. Institutional theorists argue that fragmenting rights will not lead to increased marginal benefits for the user if the society has not evolved enough to accommodate the change. It thus argues that approaches for increasing efficient use of land in different societies should not be foisted onto existing societies without having a good knowledge of the existing institutions, where they have evolved from and what course they seem to be taking for the future.

This argument is relevant to the Nigerian situation because most of the land policies formulated to stimulate shifts in tenure systems have failed because they were not formulated with a thorough understanding of the systems of tenure (legal or customary) under which land is owned, the distribution of ownership and the system under which land is operated (see Hung-Chao Tai, 1974; Ega, 1986). Institutionalists argue especially that it is difficult to tell if those individuals with clearly defined rights will have the interests of the community at heart let alone that their collective behaviour will asymptotically approach the marginal benefits of the society as a whole. Therefore, clearly defined rights are not a necessary or sufficient condition for increased marginal benefit of the society (Dadzie, 2007).

On the basis of contract, institutional theorists argue that it is not possible to contract out a factor such as land that is social in nature. This position can be supported by studies conducted in Kenya, Zimbabwe and Uganda by Barrows and Roth (1990) which revealed that contracts which were supposed to lead to the creation of land markets and make it easy to borrow money to buy and sell land failed because the societies had not evolved to that system. Similarly, in Nigeria too this may not succeed because the economic environment is so unpredictable and fluctuating such that many farmers are risk-averse and therefore not ready to apply for loans.

#### IV. EVOLUTIONARY THEORY OF LAND RIGHTS

The major proponents of the theory are Boserup (1965) and Demetz (1967). As the name suggests, it is a theory of changes in land tenure. Its basic assumptions are that (a) social and economic institutions adapt to circumstances in order to be as economically efficient as possible (b) and that the property form which generally implies the lowest transaction costs is private ownership.

Broadly, the theory argues that increasing population pressure and commercialization of agriculture create a need for investment in agriculture and land development. With an increasing need for investment there is pressure for a change in property regime towards something which provides a higher degree of tenure security. Then the farmer will be able to

balance higher rate of return over time from a slowly maturing investment in the farm against possibly lower yielding but quick-turnover investments and to balance appreciation in the value of his capital assets against immediate income (Lund, 1998).

According to the property rights school, security of tenure is generally best secured through private titling. But the evolutionary theory argues that this change can be produced by the system itself; that population pressure and /or market conditions will bring about private rights independently of policy. The theory places emphasis on the demographic model of agrarian change. It is particularly against the interest-group model emphasized by the property rights school which many scholars have used to explain privatization. It believes that property rights are the product of political negotiation and tend to benefit whatever interest group holds power (Monson, 2006).

The theory argues that private property rights evolve as the population grows and land becomes scarcer (North and Thomas, 1976; Hayami and Kirkuchi, 1982, cited in Monson, 2006). The demographic model thus extrapolates that as population grows, redistribution of land becomes less common. In other words, as population increases, access to land becomes more exclusive. This means demographic growth and agricultural intensification increase the value of land and lead to a progressive transition from communal tenure toward greater individualization of land rights. This entails the concentration of the bundle of rights in the hands of a single rights holder, and translates into increasingly monetized access to land through sales and rental (Boserup, 1965). A sequential evolution is thus established between the consolidation of the bundle of rights into the hands of a single actor and the commercialization of these rights; the appearance of market transfers would follow on from the bundle of rights being opened up once the all the other elements of tenure individualization are firmly established (Boserup, 1965; Platteau, 1992 and 2000; Cohin and Ayouz, 2006). Evolutionalists therefore maintain that the evolution of land rights is a long process of agrarian change.

#### V. FLAWS OF THE THEORIES

This paper has reviewed the neoclassical economic theory, the institutionalist perspective and the evolutionary theory of property rights. Attempts by these theories to explain changes in land tenure systems are however varied. None of the theories is holistic enough to consider all the factors causing changes in the patterns of land tenure systems. All the theories are therefore eclectic with each theory emphasizing particular variables.

The institutionalist theory for instance, is not explicit on land tenure but on the forces that impinge on its use. It does not bring out the link between institutional forces and patterns of land tenure in the rural areas. The neoclassical economic theory on the other hand places emphasis on the market. But laying emphasis on the market requires the existence of credit providers who are oriented towards the needs of farmers (Dadzie, 2007). While this may assist people to enter farming as a business and provide employment, in Nigeria, it is not

likely to target the poor and guarantee their land security. Poor farmers cannot pay back loans for land acquisition from farm profits alone in addition to meeting their basic needs.

The theory particularly emphasizes that property rights should be clearly defined. This means fragmentation of land rights. But in Nigeria including many African countries, it is the communal ownership of lands that enables individuals to access land, and thus avoids landlessness. Moreover, considering the way the Nigerian society is structured, fragmentation of land will engender clashes of interests and lead to land disputes as the elite group will assert claims over land that was not theirs under customary law. By emphasizing the conversion of property rights to freehold, the neoclassical economic theorists have overlooked these eventualities (see Cotula, 2007).

Furthermore, because these theories are eclectic, they ignore other factors. For instance, it is possible that population and changing value of land coupled with cash cropping can cause changes in land tenure systems. It is also possible that other factors within the production circumstances such as conflict, migration, etc can cause or propel changes in land tenure patterns. Therefore, the use of one variable to explain shift in tenure systems does not adequately give full meaning as land tenure operate under diverse demographic, economic, cultural and socio-political circumstances. Single variables like population may create conditions for change, but population growth must of necessity act along with other factors, not independently but in combination to bring about changes in the patterns of land tenure (Dazie, 2007). This is what most of the theories explaining changes in land tenure systems have failed to do.

Although all the theories have relationship and have indeed borrowed heavily from core sociological theories, they have all failed to explain the phenomenon of change in land tenure systems because all of them are too variable-specific. To explain changes in land tenure systems therefore requires a broad-based model that would capture all the prevailing circumstances such as population growth, new production and marketing systems, and social and political relations. This paper thus adopts and reviews the drivers of change model which attempts to incorporate all possible factors causing change in the patterns of land tenure.

## VI. DRIVERS OF CHANGE MODEL

This is a multi-factor model developed by Oxford Policy Foundation (2004) for the British Department for International Development (DFID) to explain changes especially in the developing world. It is developed primarily as a response to the overwhelming contention that the failure of development programmes initiated by development partners and agencies is because of lack of political will on the part of benefiting communities or countries. It believes that the failure of the programmes is because of lack of knowledge by development partners and agencies about the factors that shape development in particular contexts

Since the development of the model for the DFID, scholars have applied it in different contexts as a model of social change. As an aspect of social change, the model

believes that all systems are dynamic and responsive to changing environment in many ways. It particularly believes that changes in all systems are often driven by certain factors. The major concern of the model therefore is to identify the factors that shape the incentives for change both in the medium and long term (Leftwich, 2007). It argues that development changes are normally the product of a set of identifiable factors or forces. These factors include exogenous (macro-environmental) and endogenous (micro-environmental) factors that contribute to the performance of the society. Macro environmental factors include global economic growth, global political environment and technological development. These macro factors which create broad contexts for development interact with the micro-environmental factors that affect particular elements of the system.

In trying to explain change, the model adopts a historically informed approach. It focuses on where the society is coming from, where it is headed and the challenges (Booth, et al, 2006). It argues that understanding where a society is coming from in economic, political and social terms is essential for appreciating where it is likely to go in future. The model is thus concerned with a systematic assessment of scenarios rather straight-line projections. Scenario being a vision of the future shaped by a set of interconnected variables- probable factors whose interaction shape future environments and events (Blank, 2006).

This model has been used to explain a variety of events. For example, it has been used by Blank (2008) to analyze drivers of change in North American freight transportation infrastructure. It has also been used by Leftwich (2007) to analyze drivers of change in institutional formation and maintenance (see also Hyden, 2008; and Debbie, 2004).

In terms of land tenure, the model has been applied by Cotula and Neves (2007), Delville (2007) and Quan (2007) to identify drivers of change in land tenure systems in Africa. These scholars have posited that land tenure changes in Africa are affected by a combination of macro environmental factors and wide array of micro-specific dimensions of events.

This model is quite appropriate in explaining changes in land tenure systems in Africa and Nigeria in particular because both macro and micro factors are in operation and are affecting the way customary tenure systems operate. For example, in Africa, most countries including Nigeria are experiencing major social transformation. Population growth is increasing and competition over land is rising as a result, urban settlements are growing fast, encroaching on agricultural land. Livelihoods are changing with many rural households increasingly relying on a range of off-farm activities in the rural areas (Neves, 2007). Local production systems are becoming more integrated into the global economy with cash crops expanding into areas previously used for locally consumed products. Government policies are formulated and implemented. All these have profound effect on land relations.

On the basis of where the society is coming from, there is no gain saying that most, if not all, African countries have colonial experience. And in most of these countries, there was a breakdown of traditional structures. In Nigeria for instance, colonialism facilitated the incorporation of the country into the

global capitalist economy. The incorporation of the country into the capitalist economy introduced a new economic system-cash cropping- which changed the value of land. With cash cropping, people began to see land as a valuable commodity with predictable economic values. This new economic system of agriculture stimulated a need for more exploitation of land which changed the pre-colonial distribution of land. People now began to scramble for land. These new demands created a chain of processes which threatened and undermined the customary land laws.

The change in land tenure systems in Nigeria is not entirely predicated on the mechanism of exogenous factors but also internal factors. Nigeria has been experiencing strong demographic growth. As a result of demographic growth, population density has increased substantially. This increasing demographic growth has profound implications for land tenure arrangements. For example, it has continued to change the ratio between labour and land resources leading to increased competition over land. There is also increase in the growth rate of urban centres. The increasing urbanization has been affecting land use and tenure. For example, the increase in urban expansion is converting land from agricultural to residential use. One cannot but agree with Cotula and Neves (2007) that the processes of urbanization and conversion are accompanied by the erosion of customary forms of tenure systems.

Similarly, changes in livelihood systems, in cultural patterns and socio-economic relations driven by growing urbanization, integration into the world economy are also affecting customary tenure in Nigeria. For instance, many people are combining trading, herding with farming. Especially in drought prone north, many farmers have taken to herding while many herders have taken to farming. The livelihood diversification coupled with demographic pressure have contributed to the breakdown of land relations in many African countries including Nigeria (Boro and Butterbury, 2005; Ellis and Allison, 2004).

Government policies have also affected the way land tenure systems operate in Nigeria. In Nigeria, the Land Use Act 1978, for instance, has vested the ownership of land in the state. The vesting of all land in the state has produced distributional consequences especially the erosion of secondary rights such as those of women (Obioha, 2008).

Changes in land tenure system influenced by the mechanism of internal factors show that social structures are capable of producing within themselves the elements of their suppression and change. Social change is not always an adjusting process. Rather, a change can be revolutionary, sudden and profound. It results from internal conflicts and contradictions which include population pressure as a result of high birth rate and invention of ideas. In our context, land tenure systems in Nigeria and indeed Africa are not an exception. Tenure systems are interconnected with other structures. This relationship is marked by tension or contradictions between the elements of time and space.

## VII. CONCLUSION

The paper has shown that changes in land tenure systems in Africa and Nigeria in particular are affected by a multiplicity of macro and micro factors. The drivers of change model is therefore most appropriate in explaining changes in land tenure systems in Nigeria in particular and Africa in general considering the multiplicity of factors that have continued to exert influence on the people's land tenure systems. In Nigeria and Africa in general, land tenure systems have over the years been influenced by both exogenous and endogenous factors such as colonialism, integration of the local production systems into the global economy, population growth, land conflicts, increasing rate of urbanization, changing methods of agricultural production and marketing, and changes in the family structure. These factors have serious effect on land tenure systems and therefore cannot be explained adequately on the basis of single factor theories.

## REFERENCES

- [1] Ault, D. And Rutman, G. L (1979) "The Development of Individual rights to Property in tribal Africa". *Journal of Law and Economics* 22(1)
- [2] Baro, M. And Butterbury, S (2005) "Land-based livelihoods" in Wisner, B.; Toulmin, C. and Chitiga, R.(eds) *Towards a New Map of Africa*; London: Earthscan
- [3] Barrows, R. And Roth (1990) "Land Tenure and Investment in African Agriculture: Theory and Evidence". *Journal of Modern African Studies* 28(2).
- [4] Baye, M.F (2007) *Changing Land Tenure Arrangements and Access to Primary Assets under Globalization: A Study of Two Villages in Anglophone Cameroon*
- [5] Bentsi- Enchill, K. "Do African Systems of Land Tenure Require a Special Terminology"? *Journal of African Law* vol.9
- [6] Blank, S. (2006) " Drivers of Change: Thinking about North American Freight Transportation Infrastructure in 2030". *North American Transportation Competitiveness Research Council*.
- [7] Booth, D; Cammack, D; Harrigan, J; Kanyongolo, E (2006) *Drivers of Change in Malawi* <http://www.odf.org.uk>. Accessed 22/4/2007
- [8] Boserup, E. (1965) *The Conditions of Agricultural growth: The economics of Agrarian Change under Population Pressure*. London: Allen and Unwin.
- [9] Chitiga, R (eds) *Towards a new map of Africa*, London. Earthscan
- [10] Colin, J.PH and ayouz, M. (2006) "Development of a Land Market? Insights from Cote d'Ivoire". *Land Economics* 82(2)
- [11] Cotula, L and Neves, B. (2007) "The Drivers of Change". In Cotula, L. (ed) *Changes in Customary Land Tenure Systems in Africa*. Hertfordshire: Russell press
- [12] Cotula, L.(ed) (2007) *Changes in Customary Land Tenure Systems in Africa*. Hertfordshire: Russell press

- [13] Dadzie, R. (2007) "Neoclassical versus Institutional views on Land tenure Systems: Implications for Economic Development". *Oeconomicus VIII 2006-2007*
- [14] Debbie, W. (2004) *The Drivers of Change Approach Synthesis Papers*. Overseas development Institute, Westminster Birmingham, London.
- [15] Delville, PL (2007) "Changes in Customary Land Management Institutions: Evidence from Africa". In Cotula, L (ed) *Changes in Customary Land Tenure Systems in Africa*. Hertfordshire: Russell press
- [16] Demetz, H. (1967) "Toward a Theory of Property Rights". *American Economic Review No 57*
- [17] Diamond, J (2005) *Collapse: How Societies Choose to Fail or Succeed*. New York: Penguin
- [18] Ega, L.A. (1986) "Landholding Patterns and Related Problems of Agricultural Development in Zaria Villages". *Zaria Journal of Agricultural economics*
- [19] Ellis, F. And Allison, (2004) "Linking Livelihood Diversification to Natural Resources in a Poverty Reduction Context" Rome, FAO
- [20] Famoriyo, S (1979) *Land Tenure and Agricultural development in Nigeria*. NISER, Ibadan
- [21] Johnson, O.E.G (1972) "Economic Analysis: The Legal Framework and land Tenure Systems". *Journal of Law and economics xvi*.
- [22] Leftwich, A. (2007) The political approach to Institutional Formation, Maintenance and change. A Literature Review essay, DFID discussion Paper series no 14
- [23] Lund, C (1998) *Law, power and Politics in Niger- Land Struggles and the Rural Code*. Hamburg LIT Verlag
- [24] Mends, T.M and Meijere, J (2006) "issues on urban growth: Customary Title and Informal settlements" 5<sup>th</sup> FIG Conference Accra, Ghana March 8-11
- [25] Monson, A. (2006) "The Evolution of Land Rights: Public farmers and Privatization in Roman Egypt". A paper at 10<sup>th</sup> Annual Conference of the International Society of the NIE Boulder Co. September 21-24 2006
- [26] North, D .C and Thomas, R.P (1976) *The rise of the Western world: A New Economic History*; Cambridge: Cambridge University Press
- [27] Obioha, E.E (2008) "Changes in tenure Patterns and Customary land Practices among Igbo community in south-eastern Nigeria". *Anthropologist 10(1)*
- [28] Plateau, J.PH (2000) "Does Africa need Land Reform?" in Toulmin, C. And Quan, J.PH. (eds) *Evolving Land Rights, Policy and Tenure in Africa*. London: DFID/IED/NRI
- [29] Quan, J (2007) "Changes in Intra-Family Land Relations". In Cotula, L (ed) *Changes in Customary Land Tenure Systems in Africa*. Hertfordshire: Russell press