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Measuring the Impact of Land Reform Policy in Nigeria

by DONALD C. WILLIAMS*

THE imperative to regulate and redistribute land has become almost universal to governments in the developing world. In Africa, this kind of policy has been couched in impressive language that justifies increasing regulatory control as the only viable way to revolutionise the productive use of land for national development. Land reforms often signify one element of a larger trend involving the expansion of the state at the expense of other forms of societal authority.¹ As such, they represent the frontier of a widening struggle over legitimacy and control between 'state' and 'society'. Scholars from a wide variety of intellectual traditions have recently shown increasing interest in exploring the nature and impact of the state.² However, the overall utility of such an approach in helping us to understand political developments in Africa has often been hindered by the absence of empirical data.

The Land Use Decree promulgated in 1978 by the Nigerian Federal Government was designed to pose a direct challenge to alternative sources of societal authority by relegating all private transactions in land to governmental agencies. As far as individuals are concerned, 'reglementation' (defined as the progressive expansion of rule-bearing authority by state institutions)³ was designed to take the form of certificates of occupancy, which now exist as the sole legal medium for transactions in land. This article will assess the extent to which rules over tenurial practices are being driven by state-imposed regulatory

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¹ Sara S. Berry, 'Social Institutions and Access to Resources', in *Africa* (London), 59, 1, 1989, pp. 41–55. For a general comment on this trend, see Atul Kohli, 'The Politics of Land Reform', in Altaf Gauhar (ed.), *Third World Affairs, 1985* (London, 1985).

² See, for example, Zaki Ergas (ed.), *The African State in Transition* (Basingstoke, London, and New York, 1987); Donald Rothchild and Naomi Chazan (eds.), *The Precarious Balance: state and society in Africa* (Boulder and London, 1988); and Julius E. Nyang'oro and Timothy M. Shaw (eds.), *Corporatism in Africa: comparative analysis and practice* (Boulder and London, 1989).

³ This concept has been explored in detail from another perspective by Sally Falk Moore, *Law as Process: an anthropological approach* (Boston, 1978).

controls. The impact of the state will therefore be measured in terms of relementation in land acquisition and transfer, concentration, and dispute settlement.

LAND REFORM POLICY AND THE STATE

As with other areas of Africa, the Nigerian state has occupied a primary role in the progressive development of the national economy as well as prevailing patterns of social organisation. An established tradition of state-initiated capitalism evolved from the colonial period, at which time private commercial investments were promoted in tandem with regional and federal governments.⁴

These tendencies were accelerated as the military assumed a leadership rôle in directing the national economy in the late 1960s. Fuelled by an enormous windfall from petroleum revenues, expansionary policies were developed in nearly every sector of the national economy. Over the period from 1969 to 1979, federal outlays rose almost 20 times from ₦548.2 million to ₦18,500 million.⁵ A wide range of public corporations were established in such key areas as petroleum, mining, steel, and telecommunications as part of broad-based planning initiatives. Moreover, a succession of decrees consolidated state involvement in foreign-owned business interests, mainly by requiring the significant inclusion of Nigerians in all phases of operations while ensuring substantial indigenous control over stock shares.⁶ Grants from the Federal Military Government (F.M.G.) to the 19 States rose to over ₦3,000 million in 1979, enabling the pursuit of an equally extensive agenda in all aspects of the local economy.⁷

The Land Use Decree represents perhaps the epitome of the progressive expansion of the apparatus of the Nigerian state over this period. Enacted in 1978, this legislation envisions improvements on a grand scale in economic productivity, land use planning, and equability of access to land resources for all citizens. To accomplish these high purposes, all rights over land administration were summarily vested in

⁴ See, for example, Sayre P. Schatz, *Nigerian Capitalism* (Berkeley, 1977), pp. 3–5, and Tom Forrest, 'State Capital, Capitalist Development, and Class Formation in Nigeria', in Paul M. Lubeck (ed.), *The African Bourgeoisie: capitalist development in Nigeria, Kenya, and the Ivory Coast* (Boulder, 1987), p. 312.

⁵ Central Bank of Nigeria, *Annual Report and Statement of Accounts* (Lagos, 1980).

⁶ John F. Ohiorhenuan, *Capital and the State in Nigeria* (New York, 1989), pp. 179–82.

⁷ Victor Ayeni and Dele Olowu, 'The Politics of Revenue Allocation and Intergovernmental Relations', in Ayeni and Kayode Soremekun (eds.), *Nigeria's Second Republic* (Apapa, 1988), p. 201.

the Offices of the State Governors, to 'be held in trust and administered for the use and common benefit of all Nigerians'.⁸ All subsequent transactions in land, whether for sale, lease, inheritance, or otherwise, were to be managed by administrative agencies created under the terms of the law. The nationalisation exercise meant that for the first time in Nigerian history, the country was endowed with a uniform set of rules and administrative procedures governing all aspects of land tenure.

This legislation has been central to an ongoing debate among Nigerians over the appropriate rôle of government in what was long considered the exclusive preserve of traditional rulers, family heads, and local communities. This has been particularly true in Southern Nigeria, where the Land Use Decree had no legislative precedent.⁹ Academics have assessed the significance of this policy through a variety of studies, and have arrived at divergent conclusions about the fundamental nature of the state-society antinomy. Those utilising class analysis have interpreted the 1978 law as an important factor in élite strategies designed to promote the progressive expropriation of land from the peasantry.¹⁰ Citing the rôle of the state in this process, the Land Use Decree has also been portrayed as part of a larger corporatist trend involving the progressive development of an autonomous state in Nigeria.¹¹

However, there is considerable reason to doubt the actual effectiveness of such a policy initiative as the Land Use Decree, given the enduring impact of patron-client linkages and ethnicity in Nigerian society.¹² A number of studies contend that this enactment has had a very uneven impact on local communities. In some cases, it has been

⁸ Federal Republic of Nigeria, *Decree #6, Land Use Act* (Lagos, 1978), section 1.

⁹ All land in Northern Nigeria had been placed in the hands of traditional rulers by the Land and Native Rights Proclamation of 1916, designed not only to preserve their existing socio-economic controls, but also to prevent both European and Southern Nigerian interests from acquiring land for commercial purposes. This colonial policy only became controversial in the North as a result of the accelerated economic developments initiated by the Federal Government in the early 1970s. See Geoffrey I. Nwaka, 'The Nigerian Land Use Decree: antecedents and prospects', 24th Annual Congress of the Historical Society of Nigeria, Calabar, Cross River State, April 1979, and M. G. Yakubu, *Land Law in Nigeria* (London, 1985).

¹⁰ See, for example, Bade Onimode, *Imperialism and Underdevelopment in Nigeria: the dialectics of mass poverty* (London, 1982), and William D. Graf, *The Nigerian State: political economy, state class and political system in the post-colonial era* (London and Portsmouth, NH, 1988).

¹¹ See, for example, Lawrence A. Ega, 'Land Policy and Land Administration in Nigeria', in *Urban Law and Policy* (Amsterdam), 8, December 1987, pp. 423-34; Julius O. Ihonvbere and Timothy M. Shaw, *Towards a Political Economy of Nigeria* (Brookfield, VT, 1988); and Ohiorhenuan, op. cit.

¹² Richard A. Joseph, *Democracy and Prebendal Politics in Nigeria: the rise and fall of the Second Republic* (Cambridge, 1987).

shown that land tenure practices remain largely unaffected;¹³ in others, new opportunities have been created for community élites to reassert their influence in the arena of local politics.¹⁴ These competing perspectives will be assessed in light of a case-study from Southwestern Nigeria.

IMPLEMENTING THE LAND USE DECREE IN OYO STATE

Efforts have been made from the very beginning to induce individual compliance with the Land Use Decree. Since 1978 it has been established policy in Oyo State for the Federal Mortgage Bank not to issue loans without the presentation of a certificate of occupancy.¹⁵ Further, it has always been maintained that transactions in land are to be properly registered with the Lands Office in Ibadan (the capital of the State) in order to have legal standing. As has been true elsewhere in the Federation, this has placed enormous burdens on administrative staff in the State, creating bottlenecks at all phases of the policy.¹⁶

Despite the large influx of applications for certificates of occupancy between 1979 and 1989, only 51 employees were added to the entire Ministry of Lands, Housing, and Survey in Ibadan.¹⁷ To add to these difficulties, the Ministry has had to endure several cutbacks in funding over the last five years of budgetary constraints. With a population that has grown to an estimated 12 million by 1986, and with 13 cities possessing a population over 100,000, there is little reason to believe that existing staff and facilities in Oyo State would have been adequate for carrying out the new statutes at this time.¹⁸

¹³ Sara S. Berry, *Fathers Work for Their Sons: accumulation, mobility and class formation in an extended Yoruba community* (Berkeley, 1985), and Oluwayomi D. Atteh, 'The Role of Traditional Rulers and Local Government in Land Management Policy', in Adefolu Akinbode, Bryan Stoten, and Rex Ugorji (eds.), *The Role of Traditional Rulers and Local Governments in Nigerian Agriculture* (Ilorin, 1987).

¹⁴ Paul Francis, 'For the Use and Common Benefit of all Nigerians: consequences of the 1978 land nationalization', in *Africa*, 54, 1, 1984, pp. 5-28, and Paul J. Ross, 'Land as a Right to Membership: land tenure dynamics in a peripheral area of the Kano close-settled zone', in Michael Watts (ed.), *State, Oil, and Agriculture in Nigeria* (Berkeley, 1984), pp. 223-47.

¹⁵ Federal Mortgage Bank of Nigeria, *Information and Requirements for Loans and Savings* (Lagos, 1980), p. 14.

¹⁶ These conditions have been noted by Ifebueme Okpala, 'The Nigerian Land-Use Decree Revisited', in *Habitat International* (Elmsford, NY, and Oxford), 6, 5-6, 1982, pp. 573-84, and J. A. Omotola, 'Law and Land Rights: whither Nigeria?', Inaugural Lecture, University of Lagos, 29 June 1988.

¹⁷ *Oyo State of Nigeria Statistical Handbook* (Ibadan, Office of Planning and Budget, 1988), p. 5.

¹⁸ *A Decade of Oyo State, 1976-86* (Ibadan, Ministry of Information, 1987), p. 31.

TABLE I
 Certificates of Occupancy (C.O.s) Applied and Granted
 to Individuals in Oyo State, 1978–89^a

Number and Frequency of C.O.s Applied and Granted by State			
Year	C.O. Applications	C.O. Grants	Processing Rate (%)
1978	113	7	6.2
1979	1,293	175	12.9
1980	1,398	1,190	49.6
1981	2,629	2,590	73.3
1982	4,877	2,547	63.3
1983	2,980	966	56.4
1984	1,911	658	53.6
1985	896	830	55.8
1986	1,353	909	56.7
1987	2,801	1,426	56.2
1988	1,793	1,625	58.8
1989	2,332	347	54.6
Total	24,376	13,260	54.4

^a Source: Lands Office, Oyo State Ministry of Lands, Housing, and Survey, Ibadan. The processing rate has been calculated as a running total.

1. *Certificates of Occupancy*

The records available in the Ibadan Lands Office, as listed in Table 1, confirm the inability of the staff to process the torrent of applications received each year.¹⁹ By the end of 1989, only 54.4 per cent of the overall total of 24,376 had made their way through the approval process – in itself a lengthy affair which may take six months or more to complete.²⁰

The Decree mandated that Land Use Allocation Committees were to be established by the Governor in each State to consider the validity of applications, as well as advisory committees in each Local Government Area. When these committees were convened in Oyo State, it was reported that efforts were hindered by the absence of

¹⁹ The certificates of occupancy were drawn from a sample of 20 applications per year, selected at random from the 24,376 filed in the Oyo State Lands Office from 1979 to 1989. A 'replacement' file was requested only if a substantial portion of the relevant information needed in this survey was missing or illegible. Permission was not granted to examine separate files for plot allocations in the various housing estates administered by the Oyo State Government.

²⁰ Oyo State Ministry of Lands, Housing, and Survey, September 1990.

records of property boundaries, cadastral maps, and other supporting documentation. It has also been difficult, given the time constraints placed on these committees, to ascertain the validity of supporting evidence provided by claimants.²¹

Although the slow rate of processing has certainly tempered enthusiasm for registration, other administrative hurdles exist as well. The actual cost of making an application has been cited as deterring many individuals.²² In Oyo State, a revision of filing fees in 1984 by the Governor increased the cost of this procedure by 500 per cent from ₦50 to 250. The payment of these fees is also frequently accompanied by other 'charges' related to pervasive corruption in the bureaucracy, as indicated in a published manual on starting a business in Nigeria:

With the arbitrary powers given to the Governor of the state as regards the issuance of a C of O, and coupled with the ensuing bureaucratic red-tapism, it is almost easier to pass a camel through a needle's eye than to get this certificate. In the case of transfer of land, where the Governor's consent is required before such transfer (be it temporary or permanent) can be effected, the consent is usually withheld until some exorbitant and ridiculous transfer fee (consent fee) is paid.²³

Despite assurances of strict confidentiality, many have also avoided seeking certificates of occupancy through outright suspicion. Much of this fear results from the stipulation that all claims on land must be supported by property tax receipts from three preceding years, or evidence of tax clearance under the terms of the pay-as-you-earn system. Since many landlords have consistently evaded the payment of taxes on rented properties, there is a real possibility that processing a certificate of occupancy could lead to criminal prosecution. Those who cannot avoid the necessity of obtaining such a document have to go to great lengths to pay out the necessary bribes for securing a tax clearance certificate from the State's revenue office.²⁴

Individuals who do apply for certificates of occupancy are most concerned about land that holds considerable value. Land that has already been 'developed' with buildings or other improvements of any value is therefore more likely to appear in applications for certificates of occupancy than if 'undeveloped'. The sample of records examined from the Oyo State Lands Office, as listed in Table 2, indicates that over 78 per cent of individuals applying for certificates of occupancy

²¹ Interview with Rufus O. Adegboye, Professor of Agricultural Economics, University of Ibadan.

²² Okpala, loc. cit. p. 580.

²³ Taiwo Abdulai, *Establishing a Business in Nigeria* (Lagos, 1986 edn.), p. 47.

²⁴ *Nigerian Tribune* (Ibadan), 3 May 1980 – also confirmed in several interviews during 1990.

TABLE 2
Classification of Land Type Specified in 220 Applications for Oyo State Certificate of Occupancy, 1979–89^a

Year	Applications in Sample	Urban Land				Rural Land			
		Developed		Undeveloped		Developed		Undeveloped	
		No.	%	No.	%	No.	%	No.	%
1979	20	8	40	3	15	8	40	1	5
1980	20	8	40	1	5	11	55	0	0
1981	20	12	60	1	5	6	30	1	5
1982	20	8	40	2	10	10	50	0	0
1983	20	9	45	2	10	8	40	1	5
1984	20	10	50	3	15	7	35	0	0
1985	20	10	50	1	5	8	40	0	0
1986	20	12	60	0	0	8	40	0	0
1987	20	11	55	2	10	7	35	0	0
1988	20	13	65	4	20	3	15	0	0
1989	20	11	55	3	15	6	30	0	0
Total	220	112	50.9	22	10	82	37.3	4	1.8

^a Source: Oyo State Lands Office, Ibadan.

were preoccupied with safeguarding the status of ‘developed land’, regardless of whether categorised as ‘urban’ or ‘rural’.²⁵ By way of contrast, ‘undeveloped rural land’ was of almost no concern. This lends support for the conclusions reached in two previous studies of Oyo State that most ‘undeveloped rural land’ still remains secure under the authority of family heads (*baale*) and titled chiefs (*oloye*) who largely operate outside of the control of the State.²⁶

The data contained in Table 2 do not point to dramatic changes throughout the 11-year period covered in the survey. However, ‘developed urban land’ did show an increase from 40 per cent during 1979–80 to an average of nearly 60 per cent during 1986–9, whereas ‘developed rural land’ demonstrated a negative correlation, declining from 55 per cent in 1980 to 15 per cent in 1988. For the most part, it can be surmised that these trends resulted from the initial uncertainties

²⁵ According to the ‘Land Use (Advisory Committees) Regulations’, in *Oyo State Gazette* (Ibadan), 3, 20, 4 May 1978, pp. B27–54, land within a 12 kilometre radius around 24 of the largest centres in the State is identified as ‘urban’, while all other property constitutes ‘rural’ land.

²⁶ See Francis, loc. cit. and Rufus O. Adegboye, ‘Land Tenure Systems and the Constraints They Impose’, University of Ibadan, 1988.

that accompanied the promulgation of the Decree. Since most feared the possibility of arbitrary seizure of land by either the state or private claimants, it was not uncommon for individuals to rush to obtain certificates of occupancy for any type of land that they held, regardless of its status. It has been confirmed that 'developed urban land' across the country is the most likely to fall prey to rival claims, and these now predominate in the courts.²⁷

2. *Land Sales and Other Subterfuges*

Since the 1978 Decree does not permit land to be sold outside of official bureaucratic channels, all transfers must be reviewed by the appropriate Lands Office, which in Oyo State involves a fee assessed at 10 per cent of the sale price.²⁸ As with certificate of occupancy applications, the high cost of fees and other risks posed by disclosing information on land sales has generally inhibited most of these transactions from going on record. Although no comprehensive figures were made available, interviews with Lands Office employees in 1990 indicated that fewer than 100 such transfers are recorded each year. Undoubtedly, this represents only a fraction of the total number of land sales taking place among the approximately 12 million residents of Oyo State.²⁹

Those who do choose to register any sale often take advantage of prevailing inadequacies in the administrative process. After payment is made for a plot of land, it is quite common to locate a lawyer for what can only be described as the appropriate 'doctoring' of documents, mainly in order to convey the impression that the purchase was made prior to 29 March 1978, when such unregulated sales were still legal. In the Ibadan Lands Office, forged documents have allegedly been all too common, albeit very difficult to detect, and most pass through the administrative review process with little incident. As an official emphatically stated: 'we simply do not have the staff or the energy to look at every single detail on the applications'. Even when fraud is detected, the documents are not always rejected. Often such discrepancies simply provide one more avenue for bribery: the applicants 'are

²⁷ Reported by Richard A. Hay, 'The Political Economy of Recent Urbanization in Kaduna, Nigeria: land and housing', Ph.D. dissertation, Northwestern University, Evanston, 1986, p. 114, and by G. D. Oke, 'The Land Use Act, 1978 - a Bundle of Confusion: an appraisal of the customary land tenure under the Act', Faculty of Law Seminar, University of Ibadan, 26 April 1990.

²⁸ *Daily Sketch* (Ibadan), 28 June 1978.

²⁹ Interviews, Oyo State Ministry of Lands, Housing, and Survey, September-October 1990.

usually called in by the *oga* [boss], where a fine is assessed – not an official one, but an amount that makes them remember'.³⁰

The continued sale of land undoubtedly represents the most brazen violation of the Decree. In the words of another official in the Ibadan Lands Office: 'land speculators continue to function as if the Decree were a dead letter'. These sentiments were supported in a series of surveys of Oyo State commissioned by the Nigerian Institute of Social and Economic Research (N.I.S.E.R.) during 1982–3, when 80 per cent of respondents stated that they were aware of the existence of land sales since the promulgation of the Decree.³¹ Undoubtedly, the acute shortage of plots available for housing, as well as the great delays involved in governmental administration, continue to encourage the proliferation of sales through private channels. Individuals who want immediate access to plots for development have, in turn, provided a willing market for land brokers. This was confirmed in a survey of licensed estate developers in Ibadan, where some 64 per cent of respondents said that they preferred to pursue 'non-governmental channels' in locating land for property development.³² The same study also indicated that only 11 per cent ever bother at all to acquire land through state allocation processes.³³

The 'parallel exchange' in land generally reflects the true market value. In the period immediately before the Land Use Decree, it was possible to purchase undeveloped rural land for approximately ₦30–50 per hectare in most areas of Oyo State. Urban land was much more variable, but generally could command anywhere from ₦700–1,500 per hectare, depending on location and existing improvements. After 1978, when strong efforts were being employed to enforce the Decree in the urban areas, land values shot up to ₦2,500–5,000 per hectare. According to observers, the general rise in prices at the time was attributable to uncertainty about what direction state policy would take, as well as escalating rates of inflation. These inflationary pressures have now driven the values of plots up to 30 times their pre-Decree price. Land in prime urban locations in Ibadan, for example, was estimated to cost over ₦50,000 per hectare. Although no precise figures have been compiled, these impressions are confirmed by the 1982–3

³⁰ Ibid.

³¹ Reuben K. Udo, 'Land Acquisition and Land Allocation Constraints on Development', draft report for N.I.S.E.R.'s project, *Land Use and National Development in Nigeria* (Ibadan, 1985), p. 104.

³² Yinka Abodunrin, 'Land Use Decree and its Implications on Urban Land Utilization Strategy', draft report for *ibid.* p. 337.

³³ Ibid. p. 340.

N.I.S.E.R. survey, when 43 per cent of estate developers believed that their land had appreciated by 'more than 50 per cent' since the Decree.³⁴

Similar magnitudes of increased land values have not been apparent in rural areas, where contemporary market values show a sixfold increase to around ₦700–1,000 per hectare. Much rural land, however, is still unavailable for sale due to the ongoing prevalence of community restrictions. A comprehensive study of Oyo State in the early 1970s found that only 14.8 per cent of rural land had been acquired through sales.³⁵ Conditions have not been demonstrably altered since that time, as indicated by a more recent survey: 78 per cent of farmers interviewed throughout Oyo State stated that they intended to keep their land under lineage control indefinitely, and had no intention of selling.³⁶

3. *Land Concentration*

The Land Use Decree also contains provisions designed to constrain the amount of land that can be legally held by individuals. Statutory rights of occupancy in urban areas were strictly limited to 0.5 hectare of 'undeveloped' land, while the number of 'developed' plots was subject to the determination of the State Governor's Office. Customary rights of occupancy were to be confined exclusively to rural areas, where plots were permitted to be as large as 500 hectares of farmland or 5,000 hectares for grazing.³⁷

As a whole, the statutory limit imposed for 'undeveloped urban land' invoked the most immediate cause for alarm among those with substantial plots. In the weeks following the promulgation of the Decree in 1978, speculators in Ibadan and other large urban centres in the State purportedly hired labourers to lay foundations for buildings all over their extensive holdings of undeveloped property. In some cases, this was done at night with the use of lanterns to avoid detection. The reasoning for such action, of course, was that land even partially developed in this haphazard manner would enjoy exclusion from the 0.5 hectare limit on 'undeveloped land'. This situation had become completely out of control according to a report based on observations in Ibadan:

³⁴ Ibid. p. 347.

³⁵ Segun Famoriyo, *Land Tenure and Agricultural Development in Nigeria* (Ibadan, 1979), p. 80, and Julian Clarke, 'Peasantization and Landholding: a Nigerian case study', in Martin A. Klein (ed.), *Peasants in Africa: historical and contemporary perspectives* (Beverly Hills, 1980), p. 206.

³⁶ Adegboye, op. cit. p. 48.

³⁷ Decree #6, *Land Use Act*, sections 5–6.

indiscriminate bulldozing of undeveloped land in the city is being done to beat the deadline for the Land Use Decree to come into effect. As soon as the land is cleared, trucks are called in to dump sand and cinder blocks so that it would appear that development is under way. Essential city services have been disrupted as water pipes are damaged in the haste to complete work.³⁸

While the initial uncertainty surrounding the enforcement of the Decree has abated, similar stratagems are still pursued by landholders attempting to secure profitable claims.³⁹

It has been widely contended that the egalitarian provisions of the Decree have been superseded by persons with substantial influence in government circles. In the years since 1978, a number of former military officers and civil servants in past Nigerian administrations have gained notoriety for being involved in this kind of activity. The most prominent include the former Chief of Staff, General Shehu Yar'Adua, who possesses rights over an estimated 8,000 hectares of land in Katsina and Kaduna States; the former Permanent Secretary, Ahmed Joda, who farms 639 hectares in Gongola State; and the ex-Minister of Transport, General Alani Akinrinade, who has 540 hectares in Oyo State. The former Head of State, General Olusegun Obasanjo, is currently farming over 5,000 hectares in Ogun State.⁴⁰

Although these cases are suggestive of a larger trend towards land concentration, what is the relative significance for the development of an autonomous state or an all-powerful ruling class? In this regard, the evidence seems to indicate that even the most influential still experience great difficulty in establishing control over their lands. For example, Obasanjo claims that the acquisition of large tracts of land near his home village of Ota was plagued with difficulties:

local customs and tradition still hold sway in many communities despite the Land Use Decree, and it still takes tedious and protracted negotiation for individuals and corporate bodies to get large tracts of land... I had to wade through a barrier of litigations, and threats of it, to finally hold on to this farm in Ota. And last year, I lost some land I had acquired.⁴¹

Even large corporate schemes have been hindered from obtaining needed land resources, primarily because of unforeseen obstacles created by local communities.⁴² In Oyo State, for example, a vast N85 million estate development project at Ajoda New Town, near Ibadan, came to a virtual halt as a result of obstacles put in the way by

³⁸ *Nigerian Tribune*, 11 June 1978.

³⁹ G. O. Olaore, 'Public Versus Private Land Development in Nigeria: convergence or divergence', N.I.S.E.R. Seminar, 26 November 1986.

⁴⁰ *Newswatch* (Lagos), 14 August 1989.

⁴¹ *Ibid.*

⁴² *Ibid.* 29 July 1985.

recalcitrant local community members who were unwilling to vacate their land.

Although the Land Use Decree has eliminated a number of previous administrative shortcomings, local communities still exercise considerable control over their land. Oftentimes, this results from the remote location of certain undertakings, and the inability of project authorities to manage local operations efficiently. But the difficulties are also attributable to the state courts. Despite the reduction of all rights in land to certificates of occupancy, the courts still recognise the customary right of many communities to their lands – in effect, reinforcing the validity of rules of tenure existing outside of the authority of the State. A prominent Nigerian legal scholar has reflected on the puzzling nature of this contradiction:

actions brought to assert title to land go on unabated in our courts. Both individuals and families claim title to vast areas of land. The courts entertain such actions and decide issues of title without regard to the provisions... that limit the quantum of interest any person can hold in undeveloped land within the urban area of a state of half a hectare.⁴³

This was demonstrated in a celebrated court case in Oyo State involving Brigadier Oluwole Rotimi, the retired Military Governor, accused by several families of acquiring 4,000 acres of farmland at Arapa in western Oyo State for a sum of less than ₦2,000.⁴⁴ It was contended that Rotimi had not obtained the necessary approval of the community, and he eventually lost possession of the land, primarily because of a failure to execute the transaction in accordance with local customary law.⁴⁵

4. *Beneficiaries of the Decree*

A growing body of evidence seems to suggest that the benefits of Nigeria's land development and plot allocation schemes are chronically imbalanced. Past studies of improprieties suggest that those with wealth and close connections to State Governments are the overwhelming beneficiaries of these programmes.⁴⁶ This was supported by a special commission appointed to investigate the award of certificates of occupancy in Kaduna State. Several weeks of hearings and thorough enquiries unveiled evidence of rampant corruption and favouritism in

⁴³ J. A. Omotola, 'Does the Land Use Act Expropriate?', in *Journal of Private Property and Law* (Lagos), 3, April 1985, p. 3.

⁴⁴ *Nigerian Tribune*, 10 October 1978.

⁴⁵ *Ibid.* 19 May 1980.

⁴⁶ Okpala, loc. cit. and Olaore, op. cit.

the State Government and local business community.⁴⁷ These findings were confirmed by two independent studies conducted in Northern Nigeria.⁴⁸ In an analysis of the impact of the Land Use Decree, Peter Koehn has concluded that

state government officials have effectively barred the rural and urban laboring classes from all types of statutory rights of occupancy... Kano and Bauchi gatekeepers principally have acted in an expedient fashion that protects and enhances the common class and political interests of the managerial bourgeoisie.⁴⁹

There is some confirmation of these findings in the survey data collected from Oyo State. The bulk of applications submitted to the Lands Office in Ibadan for rights of occupancy came from individuals who claimed either affiliation with private business (57·3 per cent) or employment with a branch of government (37·7 per cent), with 118 out of 126 of the former being approved and 80 out of 83 of the latter. This shows an even greater record of success than that revealed in a survey of two Northern States, where 80 per cent of similar applicants were approved.⁵⁰ The sample in Oyo State included three lawyers, one physician, and two traditional rulers, and their applications were all approved. As a whole, this sample does not indicate that individuals employed in government enjoyed a demonstrably better approval rate than those who were not.

The Lands Office in Oyo State has not rigidly enforced rules that require applicants to reveal their earnings. As a consequence, few applicants supplied this information, thereby making it impossible to compile a consistent record of their income. Yet statements taken from interviews conducted within the State Government seem to indicate that there is considerable reason to doubt whether individuals would want to supply accurate figures, even if this rule was enforced. This is because income data could be used by the State Government to induce compliance with income and property tax laws that, to date, are widely avoided.⁵¹ It is also revealing that few applicants bothered to fill in required questions concerning their possession of other plots of land in

⁴⁷ Kaduna State, *White Paper on the Report of the Land Investigation Commission*, Vol. 1, *General Findings and Recommendations* (Kaduna, 1981), pp. 40–3.

⁴⁸ Peter Koehn, 'State Land Allocation and Class Formation in Nigeria', in *The Journal of Modern African Studies* (Cambridge), 21, 3, September 1983, pp. 461–81, and Hay, op. cit. p. 106.

⁴⁹ Peter Koehn, 'Political Access and Capital Accumulation: an analysis of state land allocation processes and beneficiaries in Nigeria', in *Afrique et Développement* (Paris), 12, 1, 1987, p. 179.

⁵⁰ Koehn, 'State Land Allocation and Class Formation in Nigeria', p. 477.

⁵¹ Interviews, Oyo State Ministry of Lands, Housing, and Survey, September–October 1990. For a more general statement on this phenomenon, see International Labour Office, *First Things First: meeting the basic needs of the people of Nigeria* (Geneva, 1982), p. 234.

Oyo State. This is another point at which correct information could be potentially damaging to applicants, since the Decree limits the possession of multiple plots of 'developed land', and extinguishes all rights in 'undeveloped urban land' that go beyond the legal limit of 0.5 hectare.⁵² Broader generalisations about class formation based on this kind of data are therefore quite difficult to extrapolate.

Notably absent from the sample are applicants in occupations with relatively low economic status. One identified himself as being involved in self-employed trading – a common pursuit throughout the State – and he was among the small number of 12 (5.3 per cent) on record as being rejected. None of the 220 applications over the 11-year period indicated that they were from the agricultural sector, in spite of the fact that more than half the State's population is engaged in farming.⁵³ Clearly, no broad generalisations about the systematic bias of the administration against poor citizens is possible from so small a sample. However, since so few, if any, are making an effort to pursue channels of authority sanctioned by the State, it must be reasoned that they are seeking security over land rights from sources within community institutions.

WEIGHING COMPETING SOURCES OF AUTHORITY

The Land Use Decree represents more than simply a vehicle for the provision of new opportunities to those fortunate enough to take advantage of the bureaucratic process. As earlier noted, this law offers the potential for fundamentally altering the basis of rule-bearing authority. A close examination of the type of evidence utilised by individuals in supporting applications for a certificate of occupancy provides particularly fruitful insights into this issue.

1. *Reglementation in the Application Process*

The most direct way to approach the question of autonomous state authority is to determine exactly which type of evidence is thought to be most persuasive by applicants. The majority of the 220 in the sample relied heavily on officially-regulated forms of documentation in support of their case. Not surprisingly, the most frequently cited were income tax receipts from the State (155, 31.2 per cent), given the fact that the

⁵² Decree #6, *Land Use Act*, section 10.

⁵³ Oyo State Ministry of Information and Culture, *What You Deserve to Know About the Military Administration in Oyo State* (Ibadan, 1988), p. 13.

Governor had declared that evidence of past payment for at least three years was a necessary qualification for receiving approval of all certificates of occupancy. Among other forms of documented evidence commonly utilised by applicants were deeds of conveyance (68, 13·7 per cent), which are usually acquired through the services of a lawyer and recorded in the State's appropriate registry for a fee. Titles registered before 1978 under the Registry of Titles Act were somewhat less common (49, 9·9 per cent), being legal instruments formerly used to confirm possession of allodial rights on a piece of land. Outside of the purview of the State's apparatus, but none the less of legal importance, were lease contracts and agreements (76, 15·3 per cent).

The sample provides initial indication that representatives of institutions outside the direct control of the State were much less important to applicants. However, a number of traditional rulers and family heads were consulted and cited (43, 8·7 per cent) in support of land claims. Some individuals turned to past court decisions: as a whole the higher (State or Federal) courts were slightly more prominent as authoritative evidence (45, 9·1 per cent) than customary courts (30, 6·0 per cent).⁵⁴

Who is most likely to have disregarded evidence from sources most closely associated with institutions outside the State? A closer look at those employed in the private sector reveals that this group of 126 in the sample of 220 had the greatest propensity for this tendency. Table 3 shows that individuals with backgrounds in commerce, real estate, and finance supported their applications with tax receipts (37·2 per cent), deeds of conveyance (13·7 per cent), registered titles (13·2 per cent), and higher court rulings (12·3 per cent). All told, this kind of documentation appeared in an overwhelming majority (88 per cent) of sources. In contrast, community institutions, represented here by traditional rulers, family heads, and customary court decisions, were cited in under 6 per cent of these 126 applications.

An initial examination of the employment backgrounds of the applicants in the sample did not indicate that one type of individual was significantly more reliant than another on evidence derived from community authority. However, other studies of land tenure in Southwestern Nigeria have indicated that customary law and traditional rulers continue to be most important in rural land

⁵⁴ In the African context, customary law may be distinguished from statutory law in that legal rules are not codified, courts often function on an informal basis, and presiding authorities constitute élites from a highly localised, indigenous community. See, for example, C. Ogwurike, *Concept of Law in English-Speaking Africa* (Enugu, 1979).

TABLE 3
Citations by Type of Evidence in Support of 126 Private Business Applicants for Oyo State Certificate of Occupancy, 1979-89^a

Type of Evidence	Citations for Type of Employment							
	Commercial		Real Estate		Financial		Total	
	No.	%	No.	%	No.	%	No.	%
Title	16	11.9	8	9.2	14	21.9	38	13.3
Tax receipt	49	36.6	31	35.6	26	40.6	106	37.2
Deed	11	8.2	18	20.7	10	15.6	39	13.7
Lease	23	17.2	8	9.2	2	3.1	33	11.6
Mortgage	10	7.5	5	5.7	1	1.6	16	5.6
Higher court	17	12.7	11	12.6	7	10.9	35	12.3
Customary court	0	0.0	1	1.2	0	0.0	1	0.4
Traditional ruler	8	5.9	5	5.7	2	3.1	15	5.3
Other source	0	0.0	0	0.0	3	4.7	3	1.1
Total	134	100.0	87	100.0	64	100.0	285	100.0

^a Source: Oyo State Lands Office, Ibadan.

TABLE 4
Citations of Community Authority in 220 Applications for Oyo State Certificate of Occupancy, 1979-89^a

Type of Land	Applications		Citations of Community Authority	
	No.	%	No.	%
Developed urban	112	56	4	3.4
Undeveloped urban	22	10.0	18	81.8
Developed rural	82	41	24	29.3
Undeveloped rural	4	2	3	75.0
Total	220	100	49	22.3

^a Source: Oyo State Lands Office, Ibadan. Community authority is here defined as any citations involving statements of family heads or traditional rulers, as well as customary court decisions.

transactions.⁵⁵ This was indeed confirmed in a breakdown of the sample by locality, as shown in Table 4. Some 75 per cent of applications for 'undeveloped rural land' and 29.3 per cent for

⁵⁵ See Francis, loc. cit. and Adegboye, op. cit.

'developed rural land' indicated a reliance on this form of institutional authority.

Although very few of those offering evidence of occupancy rights over 'developed urban land' cited a community authority (3.4 per cent), it is somewhat puzzling that those seeking to support claims for 'undeveloped urban land' relied extensively (almost 82 per cent) on evidence taken from such a source. As earlier stated, the Land Use Decree no longer recognises the validity of customary law in urban areas. An explanation for this apparent anomaly can be derived by turning to the continuing authority of community institutions. Under Yoruba customary law, all unused land is relegated to the trusteeship of the family head (*baale*), or some other local title-holding chief, to be distributed to lineage members based both upon immediate needs and egalitarian considerations that reserve an equal portion for all.⁵⁶ Based on the supposition that individuals are still relying heavily on these authorities to substantiate land claims, this question appears to be resolved.

2. *Disputes Over Applications*

Procedures have also been put into place to make provision for resolving conflicting claims over the same parcel of land covered by a certificate of occupancy. In order to avoid the possibility of oversight, the precise location of an application must be gazetted one month prior to beginning the administrative process. Should a conflict arise during this time from persons filing counterclaims, disputants are referred to the Oyo State Land Use Allocation Committee.⁵⁷

The dispute resolution and review process has not been followed closely in accordance with the law, primarily due to the overriding political sensitivity of the Land Use Allocation Committees in Nigeria. Their non-partisan independence was thoroughly violated during the era of civilian rule (1979–83), when they became the tool of Governors.⁵⁸ These committees became particularly notorious throughout Oyo State as an important means for acquiring highly-desired land in government housing estates.⁵⁹ According to officials in Ibadan, it

⁵⁶ Peter C. Lloyd, *Yoruba Land Law* (London, 1962), p. 182, and Nathaniel A. Fadipe, *The Sociology of the Yoruba* (Ibadan, 1970), pp. 106–9.

⁵⁷ 'Land Use (Advisory Committees) Regulations', in loc. cit. p. B54.

⁵⁸ Segun Famoriyo, 'Land Resources Management in Nigeria: the Land Use Act revisited', FAMAN Second National Conference, Zaria, 5–7 August 1985, p. 17.

⁵⁹ Donald C. Williams, 'State-Society Relations in Perspective: the politics of land reform in Nigeria', Ph.D. dissertation, University of Florida, Gainesville, December 1991.

was widely known that 'anyone with any money or friends in high places in Agodi [i.e. the State Government] could get a certificate for land that they wanted... for a while, we in the Lands Office really had no say over who got what'.⁶⁰ The approval process was thus side-stepped as influential individuals received plot allocations with little hindrance. This trend was reflected in the sample of applications for 1981 and 1982 (see Table 1), when the processing rates for those two years averaged 68.3 per cent, before dropping appreciably thereafter.⁶¹

The close association of these committees with civilian-era politics in Oyo State led to their dismissal in January 1984 by the new Military Governor, Colonel Oladaye Popoola, who justified this and other actions by stating that 'we are sweeping government clean of all of these corrupt elements in the interest of probity and order'.⁶² Yet no attempt was made to reappoint new advisory bodies, and the Military Government subsequently turned to *ad hoc* committees comprised entirely of bureaucrats from the Ministry of Lands, Housing, and Survey.

At present, when competing claims are registered over a co-terminous plot, the appointed committee becomes a 'mini-court' according to one experienced official, in which both sides are invited to come and present their evidence. An attempt is made to discern which case is more viable; a process that depends most convincingly on 'the root of title; which of the land agreements is more authentic... most important is evidence to show that his father or grandfather is the original owner, along with any documentary evidence'. If cases involve competing interpretations of matters of jurisprudence or past court decision, they are referred to a tribunal composed of officials in the Ministry of Justice. Once a decision is made by this body, any additional appeals must be tendered before the higher courts for adjudication. Although this would present many opportunities for greater scrutiny, a lands official stated that most individuals are not interested in paying court costs, and estimated that fewer than 5 per cent of decisions about certificates of occupancy are actually appealed in this way.⁶³

Relatively few of the applications in the sample were challenged by

⁶⁰ Interviews, Oyo State Ministry of Lands, Housing, and Survey, September–October 1990.

⁶¹ Confirmed by an abundance of accusations in opposition newspapers concerning the preferential manner in which land rights were being handed out in States controlled by the Unity Party of Nigeria (U.P.N.). See, for example, *National Concord* (Lagos), 20 December 1981, 12 February and 7 August 1982.

⁶² *Daily Sketch*, 6 January 1984.

⁶³ Interviews, Oyo State Ministry of Lands, Housing, and Survey, September–October 1990.

rival claimants – only 16 (7.3 per cent) out of the entire 220. Among the mimeographed evidence submitted to the Land Use Allocation Committee, disputants provided such standard information as income tax receipts, deeds of conveyance, and leases in frequencies somewhat higher than the whole sample. Most likely, this is attributable to the belief that more facts and figures were perceived to be necessary in order to document a particular claim in a dispute. However, the most unusual finding is the considerably greater reliance on authorities derived directly from community institutions in the sample, as indicated in Table 5. As a whole, traditional rulers and family heads were cited in 75 per cent of disputed cases, as against 8.7 per cent in the entire sample, and the incidence of customary court rulings was also significantly higher.

The most likely reason for reliance on evidence taken from community-level institutions relates to their unique status in the local setting. Unlike paper documents, the testimony of traditional rulers and family heads provides a living record of events in the past. As explained by Christopher Adelakun, an experienced lawyer in this field:

no one can question the fact that an elderly *oba* or *bale* actually was present at the time many events in the dispute took shape... their words must by custom be honoured, and their knowledge of the past is foremost.

Their presence on behalf of a claimant also represents more than just another piece of evidence, carrying the weight of the community: '*obas* and chiefs give us more than information about who has held the land in past years, or who built what, they also give us their reputation'.⁶⁴

3. *Popular Perceptions in Survey Data*

To what extent has state intervention had a positive impact on the perceptions of most people? The earlier-cited N.I.S.E.R. surveys conducted during 1982–3 indicate that a majority (56 per cent) of all respondents were opposed to the Land Use Decree. Many criticised the associated administrative delays and/or the way that the new procedures inhibited the sale of land. The most widely cited reason for this sentiment (reflected by 61.7 per cent) was that the enactment had made it more difficult for individuals to obtain land.⁶⁵ A survey of estate developers in Ibadan found 64.4 per cent of them believing that land acquisition was 'much easier' before 1978. Among the minority

⁶⁴ *Ibid.*

⁶⁵ Udo, *loc. cit.* pp. 84 and 92.

TABLE 5

Citations by Type of Evidence in Support of Competing Claims on Applications for Oyo State Certificate of Occupancy, 1979–89^a

Type of Evidence	Citations			
	Dispute Cases		Entire Sample	
	No.	%	No.	%
Registered title	0	0.0	49	9.9
Tax receipt	9	56.3	155	31.2
Deed of conveyance	7	43.6	68	13.7
Lease	4	25.0	76	15.3
Mortgage	1	6.3	22	4.4
Higher court	0	0.0	45	9.1
Customary court	6	37.5	30	6.0
Traditional rule	12	75.0	43	8.7
Other authority	2	12.5	9	1.8
Total	41	8.2	497	100.0

^a Source: Oyo State Lands Office, Ibadan.

supporting the Decree, 70.9 per cent felt the most important benefit was that land acquisition by the State Government was facilitated.⁶⁶

There is no doubt about the ongoing relevance of community institutions. Overall, only 38.3 per cent of respondents in the N.I.S.E.R. surveys covering seven States believed that the Government had completely replaced the authority of ‘community leaders and family elders’ in land transactions. Although only 3.2 per cent felt that traditional rulers were completely unaffected by the Decree, many agreed that it represented a significant threat to their authority (42.5 per cent), as well as an important loss of income from rents and tributes (44.7 per cent).⁶⁷ These findings were even more strongly supported in a detailed study of three rural areas in Bendel State. Where chiefs have by custom possessed unrivalled authority over all aspects of land administration, only 8.1 per cent of respondents held the view that traditional rulers had been ‘completely replaced’ by the Land Use Decree. Yet even they perceived that the enactment had exercised a demonstrable impact on local land tenure. To this end, some 36.6 per cent believed that the Decree had ‘interfered with traditional rights of community trusteeship’ held by the chiefs, and another 22.6 per cent

⁶⁶ Abodunrin, loc. cit. p. 346.

⁶⁷ Udo, loc. cit. p. 107.

felt that land development had become 'more expensive and haphazard' since 1978.⁶⁸

REGLEMENTATION AS A MEASURE OF STATE AUTONOMY

The Land Use Decree provides a potentially important means for influencing state-society relations via certificates of occupancy. By reducing all pre-existing community rights over land to one legally enforceable instrument, the regulatory control of the state bureaucratic apparatus has been extended down to one of the most intimate levels of social interaction.

Well over a decade later, however, there is considerable evidence that most transactions in land continue to proceed outside of the authority of the States in Nigeria. This is apparent in Oyo, both in the conduct of individuals in avoiding prescribed channels of authority, and in the abundance of land transactions that persist entirely outside of the State's scrutiny. Whether one considers the enforcement of state law through administrative agencies, courts, and other affiliated parties, or the actual behaviour of individuals, there was little acknowledgement of the new dispensation in land tenure rules.

The most obvious reason for this relates to the inability of local administrators to handle the enormous tasks set down in the Land Use Decree. With small staffs and inadequate funding, enforcement has been uneven at best. In the context of extensive fraud and all manner of artifices used in falsifying documents, the bureaucratic obstacles associated with these tasks become even more difficult to resolve. As a whole, it must be concluded that substantial elements of the Decree remain simply unenforceable, despite a number of actions taken to induce compliance.

But the issue goes beyond simply the level of administrative inadequacy. The weak presence of governmental authority was also apparent in the actions of individuals seeking access to the State's resources. Those awarded certificates of occupancy seem to continue to rely heavily on traditional rulers and customary court decisions in obtaining security of title, especially in the case of 'undeveloped land' and in the resolution of disputes. We cannot therefore conclude that authority over transactions in this field has been moving progressively out of the control of community-level institutions.

Indeed, the formal apparatus of the Land Use Decree seems to have

⁶⁸ Osa Osemwota, 'Ownership, Control and Management of Land in Bendel State, Nigeria', in *Land Use Policy* (London), 6, 1, 1989, pp. 75-83 and 81-2.

most to offer to those with great wealth or preferential connections to government. As indicated by the evidence utilised by these persons in acquiring certificates of occupancy, this is the only recognisable group that seems capable of breaking away from an overt reliance on the authority of community institutions. At the same time, there is little indication that the Decree has contributed demonstrably towards a progressive concentration of land in the hands of this group, as contended by some.

We must conclude that there is little evidence to support claims about either the progressive expropriation of land from community authorities, or an increasingly autonomous state apparatus. Of course, the 1978 legislation has provided new opportunities and constraints, and it would be incorrect to surmise that the state-society struggle is at a standstill. Rather, the manner in which both land administration and private transactions are now carried out brings to light new rules surrounding tenure that must be discovered by individuals seeking to adapt to the uncertain legal dispensation initiated by the Land Use Decree.

In Nigeria today, acquiring land, either through the prescribed state channels and/or by more surreptitious means, involves a considerable expenditure of time and resources, not all of which assure complete success. Undoubtedly, this situation will remain in flux due to the enduring character of community institutions, and the inconsistent stand of the courts in providing them with a restructured rôle in the new dispensation of state-regulated land tenure.