Humberside Journal of Law and Social Sciences

ISSN 2051-7335(Print)
ISSN 2051-736X (Online)

Julia Law Publishers, England, United Kingdom

Website: www.juliapublishers.com
Peer Reviewed Article

Volume 10(1) 2020 pp. 26 - 42
Paper Received 2/2/2020 Revised Version Accepted 16 March 2020

The Effects of Customary Right Of Occupancy on Indigenous Land Use of the Ikwerre People of Nigeria

ONUOHA, Anugbum, PhD.
Faculty of Law, Rivers State University, Nigeria

Abstract
The goal of this article was to evaluate the extent to which the current legal regime in Nigeria preserves or deprives the right and access to lands of the Ikwerre Indigenous peoples of Nigeria. The article commenced by validating the international law perspectives which affirms the Ikwerre peoples as indigenous people, therefore, entitled to the protection of international laws. It argued that, the Land Use Act enacted in 1978 through Military Decree is coercive and substantially eroded the rights to property of a larger population of the Ikwerre peoples that reside in the rural areas of Rivers State of Nigeria. It recommend amongst others, that the Land Use Act should be repealed and, Section 315(5)(d) of the Constitution of the Federal Republic of Nigeria (as amended), which energizes the Land Use Act should be expunged.

Keywords: Land, Ikwerre, Laws, Food Security, Nigeria.

1. Introduction

According to the National NGO Federation of Nepal, "indigenous nationalities" are: "communities or people as those ethnic groups and communities that 'have their own mother tongue and traditional customs, distinct cultural identity, distinct social structure and written or oral history of their own."[1] The Ikwerre peoples of Rivers State of Nigeria are Indigenous and Tribal peoples in accordance with international law in that, they fall within the International Labour Organization Convention's Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 1 (a) of the Convention, provides *inter alia*:

[1] National NGO Federation of Nepal (NFN). Study on status of IPs peoples' land and resource rights. Kathmandu; NFN (2013).

> Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Article 1 (b) provides that:

> Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

Similarly, the United Nations Declaration on the Rights of Indigenous Peoples,[2] creates the worldwide[3] context of minimum standards for the subsistence, dignity and safety of the indigenous peoples of the world. It further expounds on the existing human rights standards and fundamental freedoms applicable to the precise circumstances of the indigenous peoples.

The Ikwerre peoples have distinctive existence, tradition, cultures, customs and ethnic-centric social and political institutions, deeply entrenched in their history and territories.[4] They live in their territories alongside other ethnic and tribal peoples who, in the

[2] GA Res. 61/295 of 13 September 2007

[3] According to the World Bank, "Indigenous Peoples are culturally distinct societies and communities. The land on which they live and the natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being. There are approximately 370 million Indigenous Peoples worldwide, in over 90 countries. Although they make up 5 percent of the global population, they account for about 15 percent of the extreme poor. Indigenous Peoples' life expectancy is up to 20 years lower than the life expectancy of non-indigenous people worldwide. While Indigenous Peoples own, occupy, or use a quarter of the world's surface area, they safeguard 80 percent of the world's remaining biodiversity. They hold vital ancestral knowledge and expertise on how to adapt, mitigate, and reduce climate and disaster risks." Online at: worldbank.org/en/topic/indigenouspeoples accessed 13 March 2020

[4] J. Perera. Land and Cultural Survival. Philippines: ADB (2009)

progression of history, have dominate them.[5] Consequently, the Ikwerre peoples are a minority in Nigeria hence, facing political, cultural and economic marginalization at national level. As minority in a multi-ethnic country, they have been imperiled[6] to integration of policies which plagues all other smaller ethnic and tribal group of peoples thus, suffers from the non-recognition[7] of their customary rights over lands and natural resources. The Ikwerres lives in a very viable environments, containing tropical rainforests, and exotic ecosystems.[8] The main sources of earning and sustenance of livelihood is crop farming, fishing, hunting and gathering.[9] The peoples therefore depend solely on their lands for survival. In many parts of the world, special laws are enacted protect indigenous land rights. This is because:

> Indigenous peoples have deep spiritual, cultural, social and economic connections with their lands, territories and resources, which are basic to their identity and existence itself. Their tradition of collective rights to lands and resources – through the community, the region or the state -- contrast with dominant models of individual ownership, privatization and development. There is growing recognition that advancing indigenous peoples' collective rights to lands, territories and resources not only contributes to their well-being but also to the greater good, by tackling problems such as climate change and the loss of biodiversity. Indigenous lands make up around 20 per cent of the earth's territory, containing 80 per cent of the world's remaining biodiversity – a clear sign that indigenous peoples are the most effective stewards of the environment.[10]

[5] A. B. Quizon Land Governance in Asia: Understanding the Debates on Land Tenure Rights and Land Reforms in the Asian Context. Framingthe Debate Series, No. 3.Rome: International Land Coalition (2013).

[6] United Nations Department of Economic and Social Affairs (UN-DESA). (2009). State of the world's indigenous peoples. New York: UN

[7] R. R Roy. Traditional Customary Laws and Indigenous People in Asia. London: Minority Rights Group International (2005).

[8] J. S. Anaya, Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources, Arizona Journal of International and Comparative Law 22 (2005), 8, 8.

[9] Jane Monahan, Showdown in the Amazon, New Internationalist 459 (2013), 58, 58-59.

[10] United Nations. Indigenous peoples' collective rights to lands, territories and resources. UN Department of Public Information. Online at: www.un.org/indigenous accessed on 13th March 2020

In view of the crucial nature of land to the Ikwerre peoples, the following segments of this article is devoted to exploring various legal complexes[11] of Ikwerre indigenous lands and how the traditional land tenure system has been overtaken by national laws and policies to the detriment of the Ikwerre peoples.

2. The Concept of Land and Customary Tenure

There is single definition of land. However, land could be defined as a real property. It is an area of Earth surface with demarcated boundaries, comprising minerals, other natural resources underneath the surface and everything growing on the surface. Largely, every constructions such as houses erected attached to it are part of the land. Kingston and Oke-Chinda,[12] attempted to offer definition of land as follows: "… The soil and everything attached to the soil, "whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences … land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance." That is to say that: land is a real property. Land is also an area of ground with defined boundaries, including minerals or resources below the surface and anything growing on or attached to the surface." It is the vital attributes of land and the attachment of indigenous peoples to land which prompted the international efforts of the United Nations to create safeguards of the rights to land alongside other rights. For instance, Article 27 of the United Nations Declaration on the Rights of Indigenous Peoples,[13] obligated member States as follows:

> States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to

[11] Permanent Forum on Indigenous Issues, Consolidated Report on Extractive Industries and Their Impact on Indigenous Peoples, 20 February 2013,UN Doc. E/C 19/2013/16 (2013), para. 11; UN Declaration on the Rights of Persons belonging to Ethnic or National, Religious and Linguistic Minorities, GA Res. 47/135 of 18 December 1992.

[12] Kato Gogo Kingston and Mercy Oke-Chinda. The Nigerian Land Use Act: A Curse Or A Blessing To The Anglican Church And The Ikwerre Ethnic People Of Rivers State. African Journal of Law and Criminology, Volume 6(1) pp. 147-158 (2016)

[13] Adopted by the United Nations on September 13, 2007. Article 43 states that the articles of the UNDRIP "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." Therefore it is designed to protect the collective rights thereof that may have been omitted in other human rights charters emphasizing individual rights, and safeguards of the individual rights of Indigenous people.

> indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.

Section 2(1) of the Conveyancing Act[14] defines "property", to include real and personal property, any estate or interest in any property, real or personal, any debt, anything in action, any other right or interest. Land is depicted to include land of any tenure, tenements, hereditaments, corporeal or incorporeal and houses and other buildings, also an undivided share in land.

Prior to 1978, lands of the Ikwerre peoples were in the form of customary tenure resting on customary laws. In *Olubodun v. Lawal*[15]and in *Odutola v. Sanya,*[16] customary law was defined as a set of rules of conduct regulating people and things in a given society or locality, which exist at the pertinent and factual time and is acceptable and obeyed by the people of the community as binding on them. Therefore, customs are commonly a question of fact which is obligatory to be implored and substantiated by witnesses in legal proceedings.

Land tenure is a system of land ownership which almost and often involves communal, individual and family ownership rooted in traditional culture which regulates alienation and inheritance system. A conspicuous feature of land tenure in Nigeria is the dualism of customary land tenure and the established English law system. Prior to the colonization of Nigeria, all the lands were held under the customary law. However, the customary land tenure usage was applied differently in Nigeria, with each tribe having to customize it to fit their peculiar culture and religion. Smith[17] reiterates that, "customary land tenure system is the system of land holding indigenous to Nigeria and made applicable by the various High Court Laws meant to observe and enforce the observance of the customary law which is applicable and not repugnant to natural justice, equity and good conscience,

[14] 1881
[15] (2008) All FWLR (Pt. 438) p. 1468
[16] (2008) All FWLR (Pt. 400) p. 780
[17] I. O Smith. Practical approach to law of real property in Nigeria Unknown Binding Lagos: Ecowatch Publications Ltd, 2013 at p. 5

nor incompatible either directly or by implication with any law for the time being in force."

3. The Effects of the Extant Legal Regime on Customary Tenures

Contrary to the operational effectiveness of the Indigenous Customary Land Law of the Ikwerre peoples, the Federal government has increasingly altered the customs and tradition of land ownership through the enactment of legislation. The present state of events could be traced to the signing of the Treaty of Cession of 1861 between the Colony of Lagos and the British, which led to the annexation of all the lands in Lagos by the British. This was followed by the Proclamation of the Native Lands Acquisition of 1900 which expressly banned all foreigners from procuring lands in any part of the Southern Protectorate except with the consent of the British Commissioner. Shortly after, the Public Lands Ordinance of 1903 was proclaimed which permits the indigenous Chiefs to alienate the title of communal lands with compensation to the native land owners. The British Royal Niger Company thus, acquired most of the lands in the Southern Protectorate including the Ikwerre lands.

In 1906, the Crown Lands Management Proclamation, was introduced hence, the British took over and vested all the lands acquired by the Royal Niger Company in the Crown, making all the lands the property of the British government. In 1908, The Native Lands Acquisition Ordinance was enacted designed to completely prevent all non-indigenes from acquiring land in Nigeria though, the right of alienation remained with the Crown.

In 1916, the Niger Lands Transfer Act (No. 2) was enacted by the British, the Act essentially vested all the lands previously held by the Royal Niger Company and vested same in the Governor of Southern Protectorate, for and on behalf of Queen of England. The Act did not disband the Royal Niger Company, it authorizes it to occupy some parcels of the lands where it resided to enable it to continue doing business in the protectorate. In 1917, the Native Lands Acquisition Act (No. 32 was enacted to standardize the methods of land acquisition by foreigners. It introduced the system which required the consent and approval of the Governor on all land transactions. Consequently, section 3(b) Act provided as follows: "Any Instrument which has not received the approval of the Governor as

required by this section shall be null and void." Critics, for example, Adekunle[18] argued that:

> Although, on the surface, it appears that this 1917 Law was used to protect the Indigenes from exploitation by foreigners, but there seems to be an inbuilt underlying secret motive of the then British colonial government to use the Law to drive out other competing foreign powers from the country by denying them the ownership of land which the latter could use for investments.

Despite the criticisms of the Law, in 1952, the Native Land Acquisition Law was enacted to cover all lands in the Lagos colony, followed by the Laws of Western Nigeria, Cap 80 of 1959. At the attainment of Independence, the Crown control of all lands in Nigeria reverted to the natives of all tribes and regions. This changed at the promulgation of the Land Use Decree, which later became the Land Use Act 1978. Subsequent Constitutions of the Federal Republic of Nigeria have been consistent in the preservation of the private rights top lands. For example, section 43 of the Constitution of the Federal Republic of Nigeria[19] provides: "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria." Section 44(1) further stress that:

> No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:- (a) requires the prompt payment of compensation therefore and (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

[18] T. K. Adekunle, Customary Land Law under a Government Controlled Land Tenure System among the Yoruba Of South Western Nigeria. Online at: www.academia.edu accessed 17 March 2020

[19] 1999 (as amended)

In the same vein, section 315(5)(d) of the 1999 Constitution (as amended) recognizes and gives effect to some military decrees which were promulgated prior to the coming into existence of the Constitution.[20] Among such military decrees is the Land Use Decree which was later re-enacted in its entirety as Land Use Act 1978.

3.1 The Operations of the Land Use Act[21]

Section 1 of the Land Use Act provides as follows: "All lands comprised in the territory of each state in the federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act."[22] The provision inevitably generated a trust of land in each state of Nigeria as explained in *Obikoya & Sons Ltd v Governor of Lagos State & Anor*[23] and in *Nitel v Ogunbiyi*.[24]

It makes the State Governors the trustee of every land in each State. Nonetheless, The Act altered the customary land tenure system of every tribe and ethnic lands in the country. The alteration of land ownership rights was shown in the case of *Nkwocha v Governor of Anambra State*,[25] where the court explained that, section 1 of the Act implies that it is unlawful for any private individual to proclaim outright rights over lands in Nigeria. Similarly, in *Yakubu v. Abioye*[26] and in *Savannah Bank v. Ajilo*[27] the Supreme Court of Nigeria declared as follows: "… with the promulgation of the LUA 1978 all the unlimited rights and interest Nigerians had in their lands were swept away and substituted with very limited right and rigid control of the use of their limited right by military Governors and local government." Following several debates concerning the quashing of private

[20] Section 315 (1) of the Constitution provides as follows: "Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws ; and a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws."

[21] Chapter L5 Laws of the Federation of Nigeria 2004

[22] Re-affirmed in *Adisa v Oyinwola* (2000) 10 NWLR 116.

[23] (1987) 1 NWLR (Pt 50) 385

[24] (1992) 7 NWLR (Pt 255) 543; Also in *Majiyagbe v AG Northern Nigeria* (1957) NNLR 158; *Ilemobola & Co. Ltd v Governor of Kaduna State* (2002) 7 NWLR (Pt 666) 481

[25] (1984) 6 SC p. 362

[26] (1991) 5 NWLR (Pt. 100) p.130

[27] (1989) I NWLR (Pt. 57) pg. 305 at 421

ownership free simple rights over lands in *Kachalla v. Banki,*[28] and *Ezennah v. Attah*[29] the court was called to offer more clarity on the actual position of land ownership in Nigeria under the Land Use Act. It was held that, the maximum legal interest that any private entity can hold in land is the right of occupancy with fixed term of years. Implicitly, every private land owner in Nigeria is a leaseholder.[30]

The Act attempted to allay the fears of the customary land tenure owners that are mostly in the rural areas of the country by creating two major types of land rights in Section 2 of the Act, namely: Urban and Rural lands. Specifically, the law bestowed all urban lands under the control and authority of the state governors and vested all rural lands in the hands of the local government authorities. It further Section 2(2) Land Use Act establish obligates each Governor to establish an agency known as "the Land Use and Allocation Committee," whose duty is to monitor and administer the procedures for land allocations.

By the authority of section 21 of the Act, it is unlawful for anyone to alienated, assign, mortgage, transfer, sublease or otherwise of any rural land in Nigeria "without the approval of the appropriate Local Government." Similarly, section 22 makes it is an offence for anyone to alienated, assign, mortgage, transfer, sublease or otherwise of any urban land in Nigeria without the express consent of the Governor of the State *in situ*. The wordings of the Act are as follows:

[28] (2006) All FWLR (Pt. 309) p. 1420

[29] (2004) All FWLR (Pt. 202) p. 1858 at 1884

[30] Section 5(1) provides as follows: " It shall be lawful for the Governor in respect of land, whether or not in an urban areas:- (a) to grant statutory rights of occupancy to any person for all purposes; (b) to grant easements appurtenant to statutory rights occupancy; (c) to demand rental for any such land granted to any person. (d) to revise the said rental - (i) at such intervals as may be specified in the certificate of occupancy; or (ii) where no intervals are specified in the certificate or occupancy at any time during the term of the statutory rights of occupancy; (e) to impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land the subject of the certificate of occupancy and to revise such penal rent as provided in section 19 of this Act (f) to impose a penal rent for a breach of any condition, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of or any part thereof by sale, mortgage, transfer or possession, sub-lease or request or otherwise howsoever without the prior consent of the Governor; (g) to waive. Wholly or partially, except as otherwise prescribed; all or any of the covenant or conditions of which a statutory right of occupancy is subject where, owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder; (h) to extend except as otherwise prescribed, the time to the holder of a statutory right of occupancy for performing any of the conditions of the right of occupancy upon such terms and conditions as he may thing fit. (2) Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.

> It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained…"[31]

Pursuant to section 26 of the Act, transactions such as assignment, mortgage, transfer of possession, sublease or otherwise without the governor's consent are invalid. This was illustrated in *Savannah Bank (Nig) Ltd vs. Ajilo*,[32] where the single issue for determination was:

> Whether a person, who is deemed to be a holder of a right of occupancy pursuant to section 34 of the Land Use Act, requires, solely by virtue of that fact, the consent of the Military Governor before he can transfer, mortgage, or otherwise dispose of his interest in the right of occupancy. More specifically, do the provisions of section 22 of the Land Use Act apply to a person who is deemed to be the holder of a right of occupancy pursuant to section 34 of the Act solely by virtue of his being deemed such a holder.

The court held in *Savanah Bank inter alia*: "Having considered the Act as a whole, … bound by the case of *Nahman v. Odutola*[33] and also Supreme Court decisions in the case of *Labaran Nakyauta v. Ibrahim Maikima*[34]… that failure to obtain the required consent of the … Governor under Section 22 of the Act has rendered the deed of mortgage Exhibit A *null* and *void ab initio* and the mortgage transaction illegal. Accordingly, the power of sale under the mortgage cannot be exercised."

[31] Please note that section 22(1) created some exceptions that the governor's consent may not be required as follows: "(a) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor: (b) shall not be required to the reconveyance or release by a mortgage to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged and that mortgage with the consent of the Governor: [and] (c) to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same."

[32] (1989) I NWLR (pt 97) 805

[33] (1953) 14 WACA 381 @ 384

[34] (1975) LCN/01442(SC).

Though, the decision in *Savanah Bank* has been improved in *Awojugbagbe Light Industries Ltd vs. Chinukwe & ANOR,*[35] where the court stated that: "The mere fact that the Deed of Mortgage was executed in 1980 or 1982 and the Governor's consent was obtained in 1985 does not affect the validity of the Deed. Before the Governor's consent it was a lawful agreement to mortgage which could be enforced." Therefore that:

> As can be seen from the issues formulated, the main issue was whether the deed of mortgage was in fact executed in 1980 before the governor's consent in 1985. In which case the Mortgage will be caught by the provisions of Section 22 of the Land Use Act which stipulates that the prior consent of the Governor must be sought and obtained before the deed of mortgage is executed … and contended that this of course was not what the Act stated. No where did the Act state that consent must be given before execution of any document contrary, sections 22(2) and 26 presupposed the existence of an agreement before the Governor's consent.

The court concluded that, the failure to obtain governor's consent merely renders the transaction inchoate. It therefore mean that alienation of land without prior consent of the Governor is semi-valid to the extent that it becomes regularized and fully valid upon the receipt of the Governor's consent on a later date. However, the court did not state the actually duration of time-lag by which the Governor's consent must be obtained. It is important to highlight that all lands owned by federal government agencies are exempted from the consent requirements contained in section 21, 22, and 26 of the Act.[36] Hence, Section 49 of the Act reiterates *inter alia:*

> Nothing in this Act shall affect any title to land whether developed or undeveloped held by the Federal Government or

[35] (1995) 5 NWLR (Pt. 390) 409

[36] The preamble of the Land Use Act exclusively retains the land rights of all the federal government agencies and parastatals *inter alia*: "An Act to Vest all Land compromised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State , who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on Local Governments." Section 4 of the Act also extends the benefits of section 49 to lands owned by the State Governments.

> any agency[37] of the Federal Government at the commencement of this Act and, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.

3.1.1 Power to Grant Right of Occupancy

Section 5 of the Land Use Act authorizes the State Governors issue statutory right of occupancy to desirable applicants and, section 6 of the Act permits the local government councils to issue the customary right of occupancy to applicants provided that the application is on non-urban lands and that the applicants intend to use such rural lands for residential and agricultural purposes. Nevertheless, section 6(2) placed strict requirements on the grant of customary right of occupancy with regards to the size of land to which the grant may be granted. It precisely stipulates that: "No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor." Section 6(3) further permits the "local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction."

3.1.2 Effects of the Act on Lands of the Indigenous Tribes that Pre-dated 1978

Section 34(2) of the Land Use Act provides as that: "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 statutory right of occupancy issued by the Governor under this Act." This means that all developed rural lands by which developments occurred before 1978 are exempted from making application for customary right of occupancy in that the owners of such rural lands are deemed to have been granted the rights thereof. Notwithstanding, the rural owners of developed lands can legalize such rights by applying for the issue of certificate of occupancy. With regards to rural lands that were undeveloped prior to the enactment of the Land Use Act in 1978, section 34(5) provide as follows:

> Where on the commencement of this Act the land is undeveloped, then: one plot or portion of the land not exceeding half hectare in

[37] Section 49(2) provides the meaning of '*agency*' of federal government as follows: "a*gency* includes any statutory corporation or any other statutory body (whether corporate or unincorporated) or any company wholly-owned by the Federal Government."

> area shall subject to subsection (6) below, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of a statutory right of occupancy granted by the Governor in respect of the plot or portion as aforesaid under this Act; and (a) all the rights formerly vested in the holder in respect of the excess of the land shall in the commencement of this Act be extinguished and the excess of the land shall be taken over by the Governor and administered as provided in this Act.[38]

Accordingly, despite the reduction of the sizes of undeveloped lands stipulated in section 34(5), where the undeveloped rural lands are being used for farming, the size of such lands may not be affected. The private or communal owners may possess and use such lands for agricultural purposes "as if they were holders of customary right of occupancy approved by the relevant local governments."[39]

As earlier stated in this article, the indigenous Ikwerre peoples depend almost solely on lands which are their precious ancestral inheritance. The very essence of communal livelihoods and culture depend on land therefore, the Land Use Act provision which compels them to be disposed of chunks of their 'undeveloped' lands violates their rights to property and culture contrary to various international and regional laws. It should be noted that the United Nations Declaration on the Rights of Indigenous Peoples, which Nigeria subscribes, forbids hence, Article 8(1) states that:

> Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture." Article 8(1) provides that: "States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced

[38] Section 34(5) and 34(6) effectively decreased the size of private and communal undeveloped lands
[39] Kato Gogo Kingston and Mercy Oke-Chinda [n. 12]

> population transfer which has the aim or effect of violating or undermining any of their rights …

3.1.3 Effects of Revocation and Compulsory Acquisition

Section 28(1) of the Land Use Act provides that "It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest." The Act emphasizes that such revocation shall be done on the grounds of overriding public interest[40] "including but not limited to the purpose of exclusive government use; development for public good; and on the grounds of preservation of public safety."[41] In the case of

In *Dantsoho v. Mohammed*[42] and in *Foreign Finance v. L.S.D.P.C.,*[43] the courts explained that the Land Use Act forbids the compulsory taking of property for the personal use of the Governor or for re-assignment to another private entity. The Act further provides that compensation should be paid to the land owner in the event of compulsory acquisition. However, the private land owner whose land has been revoked may seek for judicial remedy where compensate is not paid, but he cannot challenge the amount of money paid to him because, Section 47(2) states: "No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act." By the same token, section 47(1) provides as follows:

> Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federation or of a State and, without prejudice to the generality of the foregoing, *no court shall have jurisdiction* to inquire into: (a) Any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of this Act: or (b) Any question concerning or pertaining to the right of the Military Governor to grant a statutory right of occupancy in

[40]Section 28(2) of the Act defines overriding public interest as: "(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder; (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation; (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith."

[41] Kato Gogo Kingston and Mercy Oke-Chinda [n. 12]

[42] (2003) 6 NWLR (Pt.817)457 2 (2003) 2 S.C 42 3

[43] *[1991] 4N.WL.R. (Pt. 184) p. 157*

> accordance with the provisions of this Act; or (c) any question concerning or pertaining to the right of a Local Government to grant a customary right of occupancy under this Act.

Section 29(3) stipulstes that, "if the holder or the occupier entitled to compensation … is a community, the governor may direct that any compensation payable to it shall be paid: (a) to the community; or (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or (c) into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community." But section 29(2) provides that, in circumstances where the ground for revocation of statutory right and/or customary rights of occupancy is for the purpose of exploiting or extracting of minerals resources, the land owner shall be paid compensation within the provisions of the "Minerals Act or the Mineral Oils Act or any legislation replacing the same."

> Despite the hardship which may be caused to the holders of the statutory right of occupancy whose lands become subject of revocation, it is also possible that, the government could recklessly use such the power of revocation to intimate and punish individuals and communities that they consider as their political enemies. The Land Use Act fails to speculate on such possibilities hence, did not provide any safeguards.[44]

4. Conclusion

As earlier discussed in the first part of this article, the Ikwerre peoples are indigenous therefore are entitled to the rights conferred on them in international and regional laws. For instance, the United Nations Declaration on the Rights of Indigenous Peoples,[45] creates the worldwide[46] context of tiniest standards for the sustenance, dignity and safety

[44] Kato Gogo Kingston and Mercy Oke-Chinda [n. 12]

[45] GA Res. 61/295 of 13 September 2007

[46] According to the World Bank, "Indigenous Peoples are culturally distinct societies and communities. The land on which they live and the natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being. There are approximately 370 million Indigenous Peoples worldwide, in over 90 countries. Although they make up 5 percent of the global population, they account for about 15 percent of the extreme poor. Indigenous Peoples' life expectancy is up to 20 years lower than the life expectancy of non-indigenous people worldwide. While Indigenous Peoples own, occupy, or

of the indigenous peoples of the world. It promotes the existing international human rights standards and essential freedoms appropriate to the specific settings of the indigenous peoples. The Land Use Act is very unfavourable to the rural Ikwerre communities who depends on the land for most of their livelihood. Land is crucial to the extent that it is regarded as deity (*ali*) which must be honour and preserved at all cost. Therefore, there are provisions in the Land Use Act which have crushed the overall land rights of the Ikwerre indigenous people.

Section 6(2) reduces the size of lands where ownership were already held by the private individuals and communities as follows: "No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor." The Ikwerre crop farmers have owned large expanse of lands in the rural areas and have depended on it for cultural and heritage economic and social wellbeing. The restriction of their rights thereof is contrary to equity, justice and good conscience. Furthermore, section 6(3) authorizes the "local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction." This is coercive and contrary to various international human rights instruments (earlier discussed in the article).

5. Recommendations

Flowing from the treatise herein, the following recommendations are put forward:

(a) The Land Use Act should be repealed in its entirety.
(b) Section of 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be boasted without exceptions.
(c) Section 315 (5) (d) which recognizes the Land Use Act, should be expunged from the Constitution of the Federal Republic of Nigeria 1999 (as amended)
(d) A new land legislation should be enacted taking into consideration the system of land tenure which pre-existed prior to the advent of the British colonialists.
(e) Alternatively, the Land Use Act should be overhauled and the sections that offends private property rights should be removed.

use a quarter of the world's surface area, they safeguard 80 percent of the world's remaining biodiversity. They hold vital ancestral knowledge and expertise on how to adapt, mitigate, and reduce climate and disaster risks." Online at: worldbank.org/en/topic/indigenouspeoples accessed 13 March 2020

.Abstracting and Indexing in:

GIGA - The Electronic Journals Library of the German Institute of Global and Area Studies, Information Centre, Hamburg; Google Scholar; Global Development Network (GDNet); Social Science Research Network (SSRN); Econlit - The American Economic Association's Index (ECONLIT); EBSCO; IndexCopernicus USA; British International Libraries; Anton's Weekly Digest; International Abstracts in Operations Research; Environmental Science and Pollution Management; Research Alert

www.juliapublishers.com