A STUDY OF CUSTOMARY LAND LAW AND TENURE PRACTICES OF SIX COMMUNITIES OF THE LOWER BENUE RIVER VALLEY OF NIGERIA

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LLM/LAW/40948/2004-05

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A THESIS SUBMITTED TO THE POSTGRADUATE SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LL.M.).

DEPARTMENT OF PRIVATE LAW,

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ZARIA

JUNE, 2011

DECLARATION

I hereby declare that the realization of this work is a record of my own research. It has not been published or presented anywhere for a higher or any degree whatsoever. All quotations and references have been acknowledged appropriately.

ABBAH James Edache Idoko.

CERTIFICATION

This is to certify that this thesis written by James Edache Idoko Abbah, meets the regulations governing the award of the degree of Master of Laws of Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This research work is dedicated to the Almighty Allah and to those very special people in my life – my late wonderful wife Jennifer and our lovely children.

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There is no self-made man. Our lives are the sum total of the inputs of others who have contributed in one way or the other in influencing and shaping our thinking and to allow us stand on their shoulders to see the distant far.

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ABSTRACT

This study is aimed at studying the customary land laws and tenurial practices of the communities of the Nigerian Lower Benue River valley. These communities are the Idomas and the Tivs of Benue state, and the Alagos, Eggon, Mada, and Gwandara peoples of Nasarawa State. The methodology adopted was a survey approach which incorporated primary data captured through questionnaire and interviews. The work has shown that in the area of study, all the land were acquired originally by settlement on virgin land. All the communities studied, except Alago, recognise inheritance as a means of acquiring land. All land in Alago community is held purely communally and not by families. In Alagoland a member of the community can be dispossessed of his portion of land for misbehaviour. In all the communities studied, the main mode of obtaining land by family members, is through allocation to adult males. In Tiv community, the allocation is on the basis of stirps (mothers' portions). Partition is unknown among the communities studied. Pledge is recognized in all the communities studied, except among the Madas and the Gwandaras, who only recognize pledge of economic trees. When a pledgee or a customary tenant leaves the land in Idomaland and in Tivland, he can come back to the land to reap economic trees he planted on the land. Thus, the principle of *quic quid plantatur solo solo cedit* does not apply in Tiv and Idoma communities. In the other communities, the matter is not as clear cut; it will be subject to negotiations or prior agreement. Customary tenancy is recognized in all the communities studied except Alago. Alienation is by consultation and consent of family members and the head of the family or community. All the communities studied do not recognize long usage or adverse possession as bestowing title on a stranger. All the communities studied recognize the role of the family head, who must be a male member of the family. He must be consulted in every land transaction, but his refusal to consent does not nullify the transaction. In all the communities studied, women cannot head a family and are not entitled to portions of land. The conclusion from this work is that the land law and tenure practices of the six communities studied differ slightly from one another, but differ significantly from those recognized among the Yoruba custom, which is the most researched of all communities in Nigeria. Most of the concepts of customary land law among the Yorubas do not apply to the communities studied. It is recommended that women should head families and should be entitled to portions of land to avoid discrimination outlawed by the 1999 Constitution. The Alago communal holding custom should be dismantled to allow for development. The principle of quic quid plantatur should apply in Benue and Tiv communities so that former tenants and pledgees do not encumber the land they have left.

CHAPTER ONE

1.0 INTRODUCTION

Customary land tenure practices are the accepted rules of practices in particular communities in terms of the customs, customary laws and norms which guide how land is used that avoid friction among the people. The communities in this study are agrarian area in the middle belt of Nigeria where land is primarily used for farming. These communities are the Idomas and the Tivs of Benue State, and the Alagos, Eggons, Madas and Gwandaras of Nasarawa State. These communities are a continuous land mass cut only by River Benue.

Customary land law is worth investigating despite the existence of the Land Use Act[1] in Nigeria. This is because the Act itself recognizes customary law in land administration[2]. Another reason for studying customary land law in Nigeria at the present time is because the provisions of the Act are not known in the rural areas and even in the urban and sub-urban areas where the provisions of the Act are known, tjhey are not appreciated. This is most evident in the Area courts of

[1] Cap L1, Laws of the Federation 2004
[2] S.21 and the definition of "occupier" in S.50, Land Use Act Cap L1, 2004.

Northern Nigeria where majority of land cases are instituted and decided on the basis of customary laws.

This study is aimed at studying the customary land laws and tenures of six communities in the Nigerian Lower Benue River Valley. The study was designed to investigate whether the customary laws in the communities are the same with those of the more researched communities in Nigeria. The second aim is to investigate whether the customary laws and practices with regard to land differ among the communities *inter se.* There are other ethnic tribes in the two States (Benue and Nasarawa), such as the Igedes in Benue State and the Ebirra Koto, Yeskwa, Afor and Gwari in Nasarawa State. However, the communities selected for this study are the more prominent ones occupying a continuous block of land, broken only by River Benue.

1.1 HISTORY AND SOCIOLOGY OF THE COMMUNITIES COVERED BY THE STUDY

Law, particularly customary laws , reflect the history and sociological nature of the people. Dias[3] reports that Savigny emphasized that the muddled and outmoded nature of a legal system was usually due to a failure to comprehend its history and evolution. He advised that the

[3] Dias, R. W. M., Jurisprudence, 5th Edition, Butterworths, 1985, p. 377.

essential prerequisite to the reform of German law, was a deep knowledge of its history. Savigny[4], who was himself a Prussian Minister of Legislation, said:

> The existing matter will be injurious to us so long as we ignorantly submit to it; but beneficial if we oppose to it a vivid creative energy – obtain the mastery over it by a thorough grounding in history and thus appropriate to ourselves the whole intellectual wealth of preceding generations.

He then went to elaborate the theory of the *Volksgeist* (legal nationalism based on national ethos or the peoples' higher values) by contending that it is the broad principles of the system that are to be found in the spirit of the people and which becomes manifest in customary rules. It is against this background that the following summary of the history and sociological backgrounds of the peoples of this study are given below.

[4] Savigny, Introduction to *The System of Modern Roman Law,* quoted by Dias R.W.M., Jurisprudence, 5th Ed., Butterworths, London, 1985.

1.1.1 History and Sociology of The Tivs

The Tivs, numbering about 2 million people,[5] occupy three-fifths of the land mass of Benue State of Nigeria from north-east; west-wards, the other two-fifths being occupied by the Idomas to the west[6].

Makar[7]states that the Tivs originated from Awange who begot Tiv and other children at unidentified location. According to Makar, Tiv showed warrior-like traits from youth, and broke away from his brothers to settle at Swem, some 3,000 feet above sea level, located in the mountainous region in north-western Cameroon in a district today called Nyievmbashaya.[8] Tiv had two sons, Ipusu and Ichongo. Both sons procreated and gave birth to the Tiv kingdom. Ayih[9] states that the Tiv people are divided into various clans and sub-clans and that there are three main clans: Kpave, Masev and Iharev. Ayi also states that Iharev is the dominant lineage in Tivland. The Iharev is sub-divided into Ipusu and Ichongo. Ayih[10]

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[5] 1991 Census figures, Nigerian Population Commission, Zone 7, Wuse, Abuja.
[6] Information Pamphlet, Ministry of Information, Benue State, GP, Makurdi, February, 1988.
[7] Makar T., The History of Political Change Among the Tiv in the 19th and 20th Centuries, Fourth Dimension Publishing Company Ltd., Enugu, 1994.
[8] Ibid.
[9]Ayih, S. O. (Abaga Toni), Nasarwa State: Past and Present, Umbrella Books, Abuja, 2003.

[10] Ibid.

also states that the position narrated by Makar[11] is another version of the account of the origins of the Tiv. He goes further to list the children of Ichongo (six in number) which is the heavier of the two branch clans, as: Iharev, Turan, Ikyurau, Masev, Ugondo, and Nongov.

The Tiv population left Swem for an unknown reason and fought their way through hostile lands until they arrived at the fertile plains of the Katsina-Ala River in present Benue State[12].

The predominant occupation is farming, but the Tivs also do other things such as blacksmithing, pottery, weaving and brewing of beer for consumption.[13]

Ayih states that the Tivs have no explicit doctrinal principles but vague ideas about the existence of God and his relation with the people on earth. The role of Aondo (God) in people's lives is a

[11] Op. Cit.
[12] Ayih supra.
[13] See also K. Dewar, Handing Over Notes on Southern Area of Tiv Division, 1936 ref. GBODIV.2/1-552 NAK. and Bohannan, Paul, The Tiv of Central Nigeria, London, 1952. p12-14.

passive one. They know witchcraft and believe in fairies.[14] In fact, an elder stated during an interview for this work, that fear of witchcraft is one of the two reasons why a young Tiv-man will leave a family land to acquire his own farm at a distant location to start a new generation all alone[15]. The other reason is that a family land is divided among the wives for tendering and a male adult whose wife has given birth would be expected to leave the portion given to him from the mother's portion to acquire land through his own might in order to start his own generation. It is mostly the younger children of a family that stay on their mothers' portions on the death of their parents as inheritance.

Thus, the Tiv man keeps perpetually pushing for more land and regularly fights neighbouring communities for his unending quest for more land. The fact that in the present day, there are hardly any vacant land to settle on does not matter to him. This orientation of behavior permanently brands him as a violent man. This standpoint

[14] Ibid.

[15] Elder Tsiga Aondoaseer, interview at the Central Market, Katsina-Ala, 14th April, 2007.

of the Tiv man can further be discerned from the view of Makar who states that:[16]

> The dispersal (of the Tivs in the Katsina-Ala plains) was motivated by the desire to secure more lands for sufficient foodstuffs to feed the ever growing population.

Makar added further that:[17]

> The possession of land *per se* became an end itself because the concept of *tar* rested on the possession of land. Land thus became a political consideration…….. Occupants of *tar* were a political group. You need land in order to have a *tar* (a permanent abode). It is within a *tar* that a man realizes himself. Acquisition of land thus became a matter of fight to finish. The inhabitants of each *tar* controlled its land and organized its political control which has been described earlier.

As Makar puts it, land in Tiv land, " is a means of group identity and expression. It is the property of a family group. It is not owned on individual basis". He says that the Tivs see land as the natural endowment from the ancestors and that people outside a family group cannot claim a share of family land. Any impression, as created by earlier writers such as Bohannan[18],

[16] Makar op.cit
[17] Ibid page 36 – 37.
[18] Bohannan P., The Tivs of Central Nigeria, London University Press, UK, 1952, pp.35-36.

that “land is not property among the Tiv” cannot therefore be possibly true”.

Bohannan[19] stated further that however, although the land is the group property, the group cannot sell it. This is because, he said, land belongs to the dead, the living and those yet to be born. Sale of land with all the political connotations attached to *tar* would be a violation of the rights of those yet to be born.

On this point, Makar states that:

> every male adult was entitled to a piece of land, the size of which would depend upon the size of the man’s family. In other words, distribution was according to need. Where the land appeared inadequate for one family group, that group could borrow from the collateral kinsmen or friends. Prior to the British advent bachelors never owned land or farm. But due to shift of basis of taxation to individuals rather than families, bachelors needed land to grow crops in order to raise money to pay tax. Land thus became more important than ever.

According to Makar[20], socially, the population is divided into *Tars* or kindreds. A *tar* is a genealogical unit, held together by a common

[19] ibid
[20] Op cit

ancestor, sub-culture and has several sub-ordinate units charged with social, religious and political functions, such as the settlement of disputes, screening of candidates for initiation into the higher *Akombo* cult, handling of matters relating to the organization of ceremonies. Members of the same *tar* cannot marry each other. A Tiv community is ruled by a *Ter* who is the chief of a *Tar*. The Ter is a chief, contrary to the popularly held opinion that the Tivs were a traditionally chiefless society. However, the chieftaincy title does not devolve on anyone on the basis of a ruling house. In the past, a chief emerges as a result of bravery at war. Of recent however, a *ter* is democratically elected based on charisma and popularity which command acceptance by the people.

1.1.2 **History and Sociology of the Idomas**

The Idomas who number about 1.5 million people,[21] occupy areas of land which lie within the valley of the Benue River and Cross River basin and some two-fifths of the total land area of Benue State, with the Tivs occupying three-fifths of the land area to the east[22]. The main thrust of Idomaland is a long belt of territory, covering some

[21] Projected from the 1991 Population Census, based on Okwu V.G., Early History of Idomaland, a paper presented at the Seminar on Contemporary History, Ahmadu Bello University, Zaria, 1974..
[22] Information Pamphlet, Ministry of Information, Benue State, GP, Makurdi, February, 1988.

208 kilometres, starting from Benue River and terminating with the north-eastern borders of Igboland, sharing boundaries with the Igalas of Kogi State[23].

It is not clear where the ancestors of the Idomas came from. It may be that they were indigenous to the location in which we find the present Idoma population in Benue State. However, the Oseshi of Oloshi[24] in Nasarawa State included the Idomas among the fragment of the defunct Kwararafa Kingdom (made up of four kindreds) that left the present Taraba State. He stated that the four related kindreds (Igala, Idoma, two Alagos) at first settled at Idah in the present Kogi State. The Igalas settled there and the three remaining kindreds moved on eastwards to Otukpo where the Idomas then settled. The Alagos (the two remaining kindreds), according to Osheshi, moved northwards and crossed the River Benue at Makurdi to settle in the present Nasarawa State. [25]

[23] Armstrong R.G., The Use of Linguistic and Ethnographical Data in the Study of Idoma and Yoruba History, Oxford Press, 1964.
[24] Oseshi of Oloshi, The History of Alago People (Installation Handbook), Keana, Nasarawa State, 2006.
[25]. Narrated by the Osheshi of Oloshi at his installation in 2006, and confirmed at the Palace of the Andoma by Elder Adra, Historial Assistant to the Andoma on 18th May 2007.

The social structure of the Idoma people is based on the hamlet (a group of which makes a village). This is where decisions are taken by the elders. The youths (*Egor*) carry out such decisions and tasks such as communal road work, burial, etc.

The Idomas were originally known for African traditional religion, but this has changed in favour of Christianity on the arrival of the Europeans in the 18th Century. They arrived at Okpoga in the present Okpokwu LGA and set up their headquarters as well as the first Methodist Church at Odoba in the present Ogbadibo LGA. From there, Christianity spread to other places.

In Idoma community, every male member of a family is entitled to a portion of land on which to farm and and another portion to build his house on without qualification. A bachelor is as entitled to a portion just as a married man is. However, a woman is not entitled to a portion as of right, although a mature unmarried woman or widow will usually be given a portion either by her husband's kindred or her own family, to eke a living.

1.1.3 History and Sociology of the Alagos

The Alagos numbering about 1.5 million people,[26] are predominantly in settlement in Doma, Obi, Keana and Awe Local Government Areas of Nasarawa State. Others are found in Lafia East and Ekye Development Areas of Nasarawa State.

The Alagos traced their origin to the defunct Kwararafa Kingdom. The Osheshi of Oloshi[27] states that after the fall of the Kwararafa Kingdom, four kindreds in the defunct kingdom moved out of the area now comprised of Taraba State, and went westwards, settling first at Idah in present day Kogi State. One of the kindreds, Igala, settled there and the three other kindreds moved again eastwards and came to a temporary rest under a tree at Otukpo (Otukpo means to the Alagos, "under the tree") in the present Benue State. One kindred, Idoma, settled there and covered that part of Benue State while two kindreds (maybe from the same mother) moved upwards towards the Benue River.

[26] Based on 1991 Population Census, Nigerian Population Commission, Zone 7, Wuse, Abuja.
[27] Op cit.

According to Osheshi,[28] they arrived in the present day Makurdi and particularly at Ojogo (near the present Army site in Makurdi) where the Chief Priest, Oseshi performed incantations and separated the waters of River Benue that enabled the people crossed. The Chief priest (Osheshi) was said to have left a metal chain at the site which is still there up to the present time. The group got to Oba'osi, a place near Keana in present Nasarawa State and rested for a while. When they were set to move again, Oseshi procrastinated, because he had secretly discovered a salt pit and a salt spring but did not disclose it to the others. This brought a small misunderstanding among the brothers, whereby Oseshi was accused of speaking in tongues, in other words: "Our tongues are speaking differently". This translates as "Inke ela ga gogo", which gave the group their present name of Alago. Oseshi thereafter found Aloshi near Oba'osi in 1232 AD. Aloshi is now a chiefdom under an Oseshi. The two remaining brotherly kindreds moved on and Akeana settled at Keana while the eldest kindred under the Ogoshi moved to Doma, found it and settled there to this day.

[28] Op cit.

Socially, the Alagos live in close collectivist communities. This shows most strongly in their customary land administration. All land in Alagoland belong to the community and held in trust by the chief. In the case of Doma, land is held in trust by the Andoma. Land is similarly held in trust in the other Alago communities in Obi, Keana and Awe Local Governments and Lafia and Ekye Development Areas. Perhaps the Alagos are one of the few people who hold land in a purely communal mode where there are no individually owned land. A member of a community is entitled to land as a right, but can be dispossessed in certain circumstances, such as when he behaves badly. In other words, members of the community can request for parcels of land and are allotted plots during good behaviour. That a member of the community can be divested of land is also unique to the Alagos.

1.1.4 **History and Sociology of the Eggons**

The Eggons, numbering about 2 million people[29], traced their origin to Borno State.[30] According to Ayih, their tradition has it that they originated from Ngazargamu in the former Bornu Empire. Elder

[29] Estimate based on the 1991 Census figures, Nigerian Population Commission, Wuse, Abuja.
[30] Ayih, op cit.

Akwashiki[31] states that their ancestors migrated from the Kanem-Bornu Empire under their leader, Abro-Agbi and settled in Nasarawa Eggon in middle of the present Nasarawa State and from there, they spread in opposite directions southwards and northwards. They, therefore, occupy much of the territory up to Akwanga to the north and as far as Lafia, Asakio, Adogi and Agyaragu to the south. According to Ayuba[32], the British first called them "Hill Mada" but this later changed to Eggon. The author said that the people themselves never originally called themselves by any group name. They are predominantly farmers and practice Christianity, traditional African religion and Islam, in that order of predominance. Ayuba[33] stated that the family was the basic unit of production and reproduction. He stated further that they were mostly hill settlers, divided into clusters of compounds, strung out along the crest of the hills. Such settlements were composed of extended family groups, each headed by a patriarch called *andakpo*. The Eggons are reputed to be the most populous ethnic group in Nasarawa State[34].

[31] An interview with Elder Akwasiki, a blind male nurse, about 122 years old Eggon man residing in Akwanga, on 16th May, 2007.
[32] Ayuba J. M., Economy and Society in Colonial North-Central Nigeria: The History of Akwanga Region 1911-1960, Ahmadu Bello University Press Ltd., Zaria, Nigeria, 2004.
[33] Ibid.
[34] As can be interpreted from the 1991 Population Census figures.

Ayih states that Abro-Agbi had two brothers with him when the migration began. They were Jade Oka and Ambina. The people were divided into two groups under the two brothers. Before they arrived in the present day Nasarawa State, Abro-Agbi had several children, among whom where Anzo, Abe, and Afor. There were originally two main groups that made up Eggon: Anzo (those led by the direct son of Abro-Agbi) and Eholo (those led by Eholo). Ayih[35] states that Eholo was a boy Abro-Agbi found in the bush during a hunting trip who he brought up. Jade Oka, one of Abro-Agbi's brothers, moved towards Wamba and founded the old Wamba town in Nasarawa State. Ambina moved downwards towards Shabu (near Lafia) and founded a town called Arugba which is no longer in existence. Today a third group has emerged: Eggon Enro, recognized by nine facial marks while the other two (Anzo and Eholo) had vertical un-numbered facial marks for identification. Ayih[36] also states that the Rindre kingdom in Nasarawa State is an off-shoot of the Eggon kingdom.

[35] Op cit.
[36] Ibid at p.14.

Ayih[37] stated that right from their origins, the Eggons were warriors who raided their neigbours regularly. Ayih stated further that the Eggons raided the people between Nasarawa-Eggon and Akwanga so much that three military expeditions had to be sent to subdue them[38]. But Aboki[39] stated the face-off with the military was because the Eggons resisted the ban on slavery and had to be subdued to stop slave trade in the area. However, Ayuba[40] contended that the soldiers' expedition was to subdue the Eggons to agree to pay tax. He stated that

> The major cause of ongoing trouble between the British and the peoples of Akwanga was taxation, which was partly due to the manner in which it was collected.

Before the arrival of the British, the Eggons were purely republican with no central administration[41]. Every village was independent, being administered by cult leaders called *Ndakobo Ashim* and the elders called *Mandakubo ogun*.[42] Ayuba[43] states that they operated on

[37] Ayih (2003) supra
[38] Ibid at p.15.
[39] Discussions with Prof. Aboki Y, at Zaria on 23rd February 2011.
[40] Ayuba op cit.
[41] Ayih supra
[42] Ibid.
[43] Ayuba op cit.

patrilineal clan basis, the *igu,* with a head called *and'ashim*. The *and'ashim* was also the head of the *ashim* cult that controlled the ancestral spirits (*abibli*) and the representative masquerades. The Aren Eggon is a recent Government-recognized first-class chief of the Eggons at Nasarawa Eggon. There are other chiefs, such as the Agidi in Mada Station and Akun chiefdom based at Akpata near Akwanga who seem to consider themselves independent of the Aren.

The Eggons are now divided into three chiefdoms: Nasarawa Eggon, Agidi and Akun[44]. The people in these three chiefdoms however, cut across the three main clans.

Land holding in Eggonland is community based, the community being the small villages. Ayih[45] stated that the Eggon sociological federation was dictated by the fact that land is hilly and difficult to control from one central administrative headquarters.

[44] Elder Akwashiki supra.
[45] Op cit. Ayih (2003)

1.1.5 **History and Sociology of the Madas**

The Madas are a people commonly referred to as the people of the northern Nasarawa State or Madan Kasa. The origin of Mada people is not clear. But Elder Sabo Gigya[46] at Andaha (near Akwanga), the headquarters of the Mada people stated that the Madas trace their origin to Numan in Adamawa State who originally came to Akwanga to trade in tin. He stated further that Akwanga was a trading center at that time. He also stated that they used to call Akwanga a "barracks" (apparently because of the WAFF that were stationed there for a long time) and that Akwanga meant 'Welcome'. Ayih[47] suggests that the Mada people might have originated from a village called Madawa near Gusau in Zamfara State. However, he confesses that apart from the resemblance in the name, there is nothing to link the two. Dandaura and Ngharen[48] state after pursuing two tenuous proposals that cannot stand serious scrutiny, they have come to the conclusion that the Mada people have no generally accepted 'legend or folklore tale of their ultimate origin',

[46] Interview in Andaha and Akwanga.
[47] Op cit. Ayih (2003)
[48] Dandaura, E.S. and Ngharen, A.Z., Mada People and Culture, Victory Family Books Ltd., Abuja, Nigeria, 1977. p. 5-9.

and therefore agree with Isichie[49] that the Madas are autochthonous, i.e. they originated where they are found.

Ayih[50] states that a man named Nzoja in about 1800, from an obscure background overwhelmed the Madas, and installed himself as the Mada chief with the title of Sarkin Nunku and established a hereditary tradition. The stool was renamed Sarkin Mada in 1950. The stool was again renamed Chun Mada in 1980 and was democratized whereby all Mada male adults were eligible for election as Chun Mada. There is therefore, no ruling houses in Mada-land.

Dandaura and Ngharen[51] state that there are many clans or villages and the kindred bond among the people of one clan is whether they eat leopard meat together. Ayih[52] states that traditionally whenever a leopard was killed, all the villages that made up a group (kindred) would be called together to share the meat. It is not clear on what basis a group of villages eat leopard meat together. It may be that

[49] Isichei, Elizabeth, Studies in the History of Plateau State Nigeria, MacMillian, London, 1982, p.7.
[50] Op cit. Ayih (2003)
[51] Dandaura, E.S. and Ngharen, A.Z., op cit.
[52] Ayih, op cit at page 125.

such groups of villages trace their lineage to a single ancestor. It might also have a cultist link.

Dandaura and Ngharen[53] state that the absence of central administration meant that consequently the villages constantly fought themselves and cut off heads which they took home as proof of manhood. Villages that eat leopard meat together (a kindred), did not as a rule fight each other. Dandaura and Ngharen[54] state that traditionally, Mada people resided in small villages and hamlets mostly surrounded by thick forest which served as lines of defence against Hausa slave raiders from Keffi and Jama'a sub-emirates long before colonization. The family (*ker*) was the social unit of reckon. The authors[55] state further that a village in Madaland would be inhabited by many *kers* of the same kindred stock and that they had a communal approach to life; farming large acres communally on rotational basis with the host providing food and *mea* (locally brewed guinea-corn beer).

[53] Op cit at page 19
[54] Op cit.
[55] Interviews at Andaha, particularly the one with Elder Egya.

Respondents[56] stated that land in Madaland is not held on community basis, but rather on family basis. Loko,[57] in a separate work, agrees with this statement. However, the Madas claim that certain hills are communal, e.g. the Numan Hill on the road to Jos, on which they claim, they first settled on arrival from Numan (in Adamawa State). The chief therefore has no authority over land in his domain beyond the settlement of land disputes.

1.1.6 History and Sociology of the Gwandaras

According to Ayih[58] the Gwandaras trace their origin to Kano. Elder Madaki Makama[59] chief of Zango, Gitata confirmed this history. The kindred, composed of hunters and their dogs, led by Karshi, believed to be the son of Mohammadu Rumfa, left Kano during the reign of Muhammadu Runfa (1476 – 1513)[60] - in protest against the new religion, Islam. Ayih[61] stated that they first settled in Zaria, where they were forced to pay tributes. They later moved further southwards to a hill called Tudun Gitata in the present

[56] Ibid.
[57] Loko, H., Mada Native Law and Custom, Ministry of Justice, Jos, 1992.p.43.
[58] Op cit.
[59] Elder Madaki Makama, Chief of Zango and former Madaki of Gitata, Kau GLA, Nasarawa State, Interview on 17th June 2009.
[60] Ayih, S. O. (Abaga Toni), Nasarwa State: past and Present, Umbrella Books, Abuja, 2003.
[61] ibid

Nasarawa State. Elder Madaki Makama explained further that on arrival there, they saw and hailed the expanse of virgin land uninhabited by anyone previously: "Ga filin tata" (see land in abundance) which gave the name Gitata to the headquarters of the Gwandaras in Nasarawa State. They thereafter spread out and now numbering some one million people,[62] are presently predominantly in Gitata, Kare, and Uke Gurku in Karu Local Government Area, and in Garaku in Kokona Local Government Area of Nasarawa State. They are also present large numbers in Shabu and Kwandare in Lafia North LGA, in Giza LGA and in Dederi (to the south of Lafia) in Nasarawa State. The Gwandaras are also present in Padan Karshi in Kaduna State (where they are known as Wambaya) as well as in Karshi and Gurku and in old Karu in the Federal Capital Territory.

The Gwandaras are predominantly farmers but they also engage in other occupations such as handicrafts. They are acknowledged musicians.

[62] Estimate based on 1991 Population Census, Nigerian Population Commission, Zone 7, Wuse, Abuja.

Culturally, the Gwandaras were originally pagan when they left Kano, worshipping idols and were adepts of Bori, the local religion. Their name came from their slang protest, “Gwanda rawa da Sallah”, which literally means “I (we) prefer dancing than praying”. In fact, it means, “We prefer practicing our traditional religion than becoming muslims”. Their language is therefore, a corrupt Hausa, and still has Hausa phrases and words. They are classified according to dialectic variations, as Gwandara Koro (Gurku area), Gwandara Kyan-Kyara, Gwandara Ara, Gwandara Toni (covering Garaku, Akwanga area), Gwandara Gitata (the center of the Gwandara culture) and Gwandara Padan Karshi in Kaduna State. Each of these variations has its own chiefdom and distinct sub-culture regarding the arrangement of ruling houses, etc. However, the Gwandaras have a uniform culture regarding inheritance, land administration and general customary rules. One strong culture is the belief that land is sacred and it has a spirit. Land should therefore not be sold or desecrated.

Today The Gwandaras are mostly Muslim. There are also Christians within them, while traditional worshippers are still found

in large numbers. The traditionalists worship many deities that they believe, reside in caves, rocks, rivers and trees. They also worship the graves of ancestors because they believe that the spirits of the ancestors continue to live in their families as protectors. They believe that the spirits also come out in the form of masquerades to guide the affairs of people and to entertain them in dances and various rituals. They practise *bori* or *arizeni* which is a culture they brought down from Kano.

1.2. STATEMENT OF THE PROBLEM

There has not hitherto, been any known comprehensive and comparative study of the customary land practices on the communities under this study. The communities are agrarian where customary practices ought to be the most important pre-occupation along with farming. Due to the absence of such a study, it had not been possible to academically ascertain what obtained in the region in comparison with other more researched communities in Nigeria.

Due to the absence of literature on the identified communities the nature of their land holding was unknown. For that matter, it was

not known what they regarded as land, i.e. whether land includes rivers, streams, hills, planted or free growing trees and minerals.

Also due to the absence of literature, the customary land laws and management in these communities regarding allocation, and how family or community members are treated, whether on the basis of egalitarianism or not, was not available.

The other missing knowledge was whether the principle of landlessness applied and also whether the people were republican or not.

Finally, in the identified communities, the application of the concept of accessibility to land as of right or whether it was subject to labour service, contract or homage as obtained in other traditional societies such as England, was unknown. These were therefore problems identified for solution in this study.

1.3 THE OBJECTIVES OF THE RESEARCH

The main objective of this work was to identify, document and discuss the land law and practices of the six major communities in the lower Benue River valley of Nigeria. Most of studies of customary land law available had been on the Yoruba and Ibo customary land law. Legal decisions on disputes from the six communities tend to use as a basis of influence, the decisions made on the law and practices of the more researched areas.

Other objectives of the study include:

1.3.1 to provide a comparative approach to the study of land law and practices with reference to the lower Benue Valley of Nigeria. This research tried to break ground on the study of land tenure law of the six communities with the view to comparing and contrasting those with that of the more researched communities, especially the Yoruba and Ibo people.

1.3.2 to afford analysis of law and practices regarding definition of land, communality of land holding and the position of family head in regard to transactions in land vis-a-vis those already documented

among the Ibos and Yorubas which dominate the land law of this country.

1.3.3 Another objective was whether the result would bring out similarities or common meeting points between the land tenures of the six communities *inter se.* This is against the backdrop of the fact that the communities came to settle on the land in that area from various other places. The questions to which answers were sought was whether the communities brought with themselves, distinctly different customary land laws and tenurial practices from their different origins.

1.4 SIGNIFICANCE OF THE STUDY

The study is significant because it has revealed the common as well as the divergent areas of Nigerian customary land laws, between the six communities and the other more researched communities, and also within the communities themselves.

This work should be very useful to researchers, academicians, legal practitioners, sociologists and anthropologists who may want to do a more in-depth work on land tenure practices of other communities in Nigeria apart from the Yoruba and Ibo customs.

It should also be of much assistance to policy makers when reviewing statutes on land in Nigeria.

1.5 SCOPE OF THE STUDY

The thesis covers the study of customary land laws and tenure practices of six ethnic communities straddling the lower part of River Benue Valley in Nigeria. These communities are the Idomas and the Tivs of the present Benue State, and the Alagos, Eggons, Madas, and Gwandaras in the present Nasarawa State of Nigeria.

The area of coverage was the lower Benue River valley where the communities are settled. The land area on which communities are found is a continuous block of land, separated only by River Benue. This work does not cover all communities in the area. There are other communities fringing the six communities that were covered. This work does not also extend to comparison with provisions of the Land Use Act *per se* except where such comparison is necessary to put the study in clearer perspective.

1.6 LITERATURE REVIEW

1.6.1 IMPORTANCE OF LAND

Land has always been very valuable to the people and has always been held in high esteem. It provides political power to the family head, the community head and the chiefs. In the past, it was considered even more important more than children, and people preferred to pledge the service of their children to pledging or parting with land. This was the basis of the customary rule that no matter for how long in years a tenant remained on a land, he was forever a tenant[63] and at any time when he derogates from his grant, such as by refusing to pay tribute[64], or denying the grantor's title[65], or attempting to alienate the land,[66] he stands to forfeit his grant, which entitles the grantor to the right of ejectment of the tenant from the land. Similarly, it was held in *Okoiko v. Esedalue*[67] that where a member pledged his portion of communally owned land, it would be redeemable by the pledgor or his descendants, no matter how long it takes.

[63] Oshodi v. Inasa (1930) 10 NLR 34.
[64] Akande v. Akorede (1971) NMLR 113.
[65] Onisiwo v. Fagbenro (1976) 21 NLR 3. See also Taiwo & Ors v. Akinwunmi & Ors (1975) 1 ALL NLR 202. See also Erinle v. Adelaja (1969) 1 NMLR 132.
[66] Buraimo v. Onisiwo (1940) 15 NLR 139.
[67] Okoiko v. Esedalue & Anor (1974) 1 ALL NLR pt 1 p.452.

Land has been perhaps the most important property that an African could own. Most wars between tribes in the past were over land needed for expansion. Land was held in awe, almost sacred and must not be sold or made available to strangers on permanent basis. On the continuous need for land in Africa, Makar stated with respect to Tiv community, that:[68]

> The dispersal (of the Tivs in the Katsina-Ala plains) was motivated by the desire to secure more lands for sufficient foodstuffs to feed the ever growing population.

Makar further[69] stated that:

> Added to these needs for land acquisition was another important consideration attached to land. The possession of land *per se* became an end itself because the concept of tar rested on the possession of land. Land thus became a political consideration. Tar means a permanent home, a place of abode. Occupants of *tars* were a political group. You need land in order to have a tar. It is within a *tar* that a man realizes himself. Acquisition of land thus became a matter of fight to finish.

Still emphasizing the concept of communal ownership of land in Tivland, Makar went on to state that:

> Land itself, as a means of group identity and expression, is the property of a family group. It is not owned by individual basis. Land is the natural endowment from the ancestors. People outside a family group cannot claim a share of family land. Any impression, as created by earlier writers such as

[68] Makar op.cit page 36.
[69] Ibid page 36 – 37.

> Paul Bohannan, that “land is not property among the Tiv” cannot therefore be possibly true. Although the land is the group property, the group cannot sell it. The land belongs to the dead, the living and those yet to be born. Sale of land with all the political connotations attached to tar would be a violation of the rights of those yet to be born”.

Land was seen as a divine given resource for the man to use to feed his family. It was also seen as a possession that conferred dignity to the family. Regarding the right of male members of the family to a piece of land, Makar finally stated that:

> Every male adult was entitled to a piece of land, the size of which would depend upon the size of the man’s family. In other words, distribution was according to need. Where the land appeared inadequate for one family group, that group could borrow from the collateral kinsmen or friends. Prior to the British advent bachelors never owned land or farm. But due to shift of basis of taxation to individuals rather than families, bachelors needed land to grow crops in order to raise money to pay tax. Land thus became more important than ever.

This customary view of land by a community to the effect that land is the most valued asset worth dying for, is not limited to Tivland; it applies inclusive of all communities of the Lower Benue River Valley.

It can however, be noticed that the practice of aggressively pushing for individual ownership of land by every male adult in this area is not found in the more researched Yoruba or Ibo cultures.

Aboki[70] stated that

> in the past, though land was in abundance, yet there were legends of tribal wars, feuds and raids resulting from disputes relating to ownership or title to land.

Aboki[71] states that land was synonymous with wealth and that a family with a large tract of land was and today, is still considered to be rich.

Aboki[72] stated further that

> land was also used as a source of political power, and that like any other property, anybody who has land can use it not only for economic purpose but also for political leverage over those who haven't, and that the vesting of state lands in the governors by the Land Use Act empowered them politically at the expense of the Chiefs, Obas and Emirs. Aboki reasons that this may perhaps be the reason for the resentment of the chiefs , Obas and Emirs to the creation of more states and local governments even when such exercises are seen as means of political emancipation and economic development of the people who are affected by such exercises.

Aluko[73] postulated that land is a valuable assets in the economic sense to an individual and that it is one of the important factors of production, and that it is good security for the financial institutions and that when

[70] Aboki, Y., Introduction to Customary Land Law, (unpublished) Lecture Notes, Ahmadu Bello University, Zaria, 1998.
[71] ibid
[72] ibid
[73] Aluko, O., The Law of Real Property and Procedure, Revised 2nd Edition, Brither Star Law Series, Ibadan 1998. P.27.

land is rich in mineral resources, it becomes a fortune for a country. Aluko also states that a land rich in minerals resources may even attract envy from neighbouring country. He traced the political problem over Bakassi Peninsula between Nigeria and the Cameroon to the fact that the Peninsula is a land found to be rich in oil.

1.6.2 THE CONCEPT OF COMMUNAL OWNERSHIP OF LAND

The concept of communal ownership of land was based on the recognition that land is a gift of nature to mankind and that it is sacred. Land was available to all members of the community or family as a right, which right did not depend on good behaviour. The point that in Africa, land belong to all members of the family was judicially recognized as long ago as 1921 in the famous case of *Ahmadu Tijani v. Secretary of Southern Provinces*[74] where the Privy Council stated that land belongs to the village, community or family and never to an individual and the concept of individual ownership of land was foreign to native ideas. This was confirmed in *Ogunmefun v. Ogunmefun* [75] In that important case, the court stated that

> each individual member of the family has in addition, vested in him or her, what may perhaps can be

[74] Amodu Tijani v. Secretary, Southern Provinces (1921) 2 NLR 24, and AC 399.
[75] (1930) 10 NLR 82.

described as the right of user during his or her life-time. This right of user is purely and simply a life interest.

What this means is that a family member is not an absolute owner of his portion[76] even if he had improved it, such as having a permanent structure like a building on it.[77] He could not therefore, as of right, pass any title to his children.[78] This principle of usufruct available to all members of a family was also recognized in *Lewis v. Bankole*[79]. The implication of this principle is that no member of a family could be deprived of a portion for any reason, including attempted alienation of his own portion.[80] That was the basis of the decision of the Supreme Court in *Ewo v. Ani*[81]

A family or community member is entitled to a share in whatever income or profit that accrues from the land, whether in the form of rents, tributes

[76] Coker v. Jinadu (1958) LLR 77; Oloja v. Ereku (1957) 2 FSC 65; Etuwere v. Etuwere (1967) NMLR 41.
[77] Adenle v. Oyegbade (1967) NMLR 136; Adeaga & Ors v. Adetona & Ors (1979) 2 LRN 262 and Ebosie v. Ebosie (1967) 7 SC 119 all of which confirm the old case of Santeng v. Darkwah (1940) 6 WACA 52.
[78] Coker v. Junadu *op cit*. See also Oloja v. Ereku (1957) 2 FSC 65 and Sule Lengbe v. Imale & Ors (1959) WNLR 325.
[79] Lewis v. Bankole (1908) 1 NLR 81
[80] In the case of Adewoyin v. Adeyeye (1963) 1 ALL NLR 52, the OOni of Ife testified that once an Ooni had allocated a portion of communal land to a native for farming the allottee enjoyed ownership rights (equivalent to occupancy rights) to the exclusion of the community and could pledge or loan it though he could not see it.
[81] (2004) 3 NWLR pt 861 p.610.

or proceeds from acquisition of communal land.[82] In *Osuro v. Anjorin*[83] the court held that a member has a right not only to a share of the income derived from the community land but also to demand a reasonable account of it when he has a reason to suspect that there is something dubious.

A member also has a right to participate in the management of a family or community land. He must also be consulted when a major decision is to be taken on the land. In *Achibong v.Achibong*[84] it was held that the requirement for consultation is a legal one and not just of convenience of the chief or elders to be observed or disregarded. This is another aspect of the egalitarian and democratic nature of customary land tenure system.

Elias wrote in the same vein, thus:

> Under the customary land tenure there is no conception of land-holding comparable to the English idea of a fee simple absolute in possession (even under English Law of possession, the Crown is the only true owner of land).

He went on to expatiate on the nature of this holding, thus:

> The average occupier has something analogous to a possessory title which he however, enjoys in perpetuity, and which gives him powers

[82] Odunsi v. Bolaji (1962) LLR 217.

[83] (1964) 18 NLR 45

[84] (1947) 18 NLR 117.

> of uses and disposition scarcely distinguishable from those of an absolute freeholder except that he cannot alienate his holding so as to divest himself and his family of the right to ultimate title.

In the six communities under study, communal ownership of land is based on family membership and therefore slaves, domestics and strangers (no matter how long they have stayed on the land) can not be regarded as members for this purpose. A man's family normally consists of the man, his wife or wives and the children born to him by such wife or wives. [85] Under customary law of all the six communities however, such children will also include those born outside the family.

In Yorubaland, a man's children will step into his shoes on his death as his heirs, but they have no more rights over the land than their late father had. In Yorubaland, the custom goes further to cover female children who are recognized for this purpose [86], and may even be head of the family if they are the eldest children of their parent or are deliberated chosen by other members of the family.[87] In area of present study, females do not inherit land nor are they ever heads of family or community. This customary provision excludes the wife or wives. In

[85] Chinwezae v. Mazi (1989) 1 NWLR pt 97 p.254.

[86] In Lewis v. Bankole (1908) 1 NLR 81, the court in obiter, stated that those who could inherit might be male or female.

[87] Folami v. Cole (1990) 2 NMLR pt 133 p. 445, and Lopez v. Lopez (1924) 15 NLR 50.

Idomaland, a female members of the family no matter how influential or knowledgeable, cannot be heads of a family. In Yoruba custom, members of the extended family will not inherit if the deceased man left children.[88] This custom applies equally in Idomaland as well as in many other parts of the area under study.

Under the Yoruba custom, it is trite to state that the family holds land in perpetuity as a corporate body while a particular family member holds a life-time interest only. However, in the area under study, male children who step into their father's land regard the land as their portion and no other family member can farm there without permission of such children. The position is analogous to partition. In this arrangement, it is only the portion given to women that are subject to the rules found in the Yoruba custom, to wit: they have no rights even in equity to pass to those who inherit them.

[88] Adisa v. Ladokun (1974) NMLR 166.

1.6.3 EGALITARIANISM AND THE DEFINITION OF THE FAMILY

Before we can talk of family land, the family has to be defined. However, defining a family is a difficult task in Africa. This is because of the extended family concept, polygamy and the position of women.

The western notion of jointly-owned property such as family property indicates equality of ownership. This is egalitarianism. In Africa, however, a family head exerts more influence on land matters than other members. In the area of study particularly, women though family members, do not own portions of land as a right.

Aboki states that according to Western patriarchal notion, a family is a political unit which consists of a man, his wife and his children, with the husband being the leader. This is what the anthropologists term the nuclear family. However, in modern Western conception, the family does not necessarily include the man or the wife. It may consist of a man or woman and his or her children, a concept known as the single-parent family. Aboki[89] states further that the definition of family under native law and custom is substantially different from the Western idea, even as the

[89] op. cit.

nuclear family concept is at the kernel of both systems. Elias[90] was of the view that family under customary law consists of a man, his wife, or wives, their children, their grown up sons and their wives and children of those sons. Elias went further to include the man's brother or close cousins and their children. By this extension, with due respects, the respected, learned author seems to have gone too far in this respect. Aboki,[91] having studied some communities in the middle area of Nigeria, observed that in the Middle Belt of Nigeria, in most communities, the extended form of family is the one obtainable. He cites particular examples of the Tiv and the Ebira communities where the organized type of the extended family system with several members may even constitute a town or a village.

According to James and Kasunmu, the family is defined as a descendant of a common ancestor. This definition though is more comprehensive than that of Elias, has a nebulous hue. The use of the word 'ancestor' in the singular sense connotes the exclusion of one parent, and it is suggested by Aboki that this may refer to the male ancestor, obviously for the simple reason that this definition of a family is within the context of

[90] Elias, E.O., Nigerian Land Law and Custom, Routledge & Kegan Paul Ltd., London, 1951
[91] Aboki, Y., Title and Management of Land Under Native Law and Custom of the People of Middle Belt of Nigeria (unpublished Thesis), A.B.U., Zaria, 1985.

customary laws relating to property (land in the main), and in most African societies, as pointed out earlier, women do not own property.

In the area of present study, all those interviewed agreed that the term "family" means first, the nuclear family, and if this ceases to exist, then the extended family, the level widening in that order to kindred and the community level. In the area of present study, for purposes of land holding, women have to be excluded because they are not entitled to a portion of land. Similarly, the legal position that women can be family head in the Yoruba culture and that they can inherit under the Kola tenancy in Onitsha do not apply in the area under study. In the Benue Valley women can have portions of land to farm during lifetime only at the pleasure of their husbands or families. Their children cannot inherit their portions.

1.6.4 LAND MANAGEMENT UNDER CUSTOMARY LAND LAW

Land management under customary law was smooth, devoid of quarrels among the family members. For one thing land was abundant. Aboki[92] states that before the arrival of the Europeans in West Africa, there was

[92] Aboki, Y. Introduction to Statutory Land Law, Lecture Notes on the Land Use Act, Ahmadu Bello University, Zaria, Revised edition August 2001.

an acceptable and well-established indigenous land tenure system, which was economically, culturally and politically satisfactory.

The ideology of that time-tested system was socialistic and collectivistic in nature and egalitarian as a philosophy, which meant that:

(a) land belonged to all members of the family or community and therefore all the members were co-owners and therefore all were entitled to at least a portion, which meant that no family member could be landless in any community. [93]

(b) land belonged to the whole community or family and was never to be alienated for any reason.[94] Although customary tenancy and even a pledge could be granted to a stranger, the land always remained the property of the community or family, since both customary tenancy and pledges were terminable on the occurrence of determining events.

[93] It was the evidence of Chief Elesi of Odogbolu in Lewis v. Bankole (1908) 1 NLR 81, that land belonged to all members of the community, including those yet unborn.
Similarly in Amodu Tijani V.Secretary, Southern Provinces (1921) 2 NLR 24 and A.C.399, the Privy Council stated that land belongs to the village, community or family and never to an individual and the concept of individual ownership of land was foreign to native ideas.

[94] Ibid but also see Nwabueze, B.O., Nigerian Land Law, and Tobi, N., Cases and Materials on Nigerian Land Law, Mabrochi Books, 1992.

c) No family member needed to labour to access it as it was seen as a gift of natural providence to all families to which each family member was entitled.

Land under the customary land tenure is managed by the community head or the village head, who acts as a kind of trustee for the people. He protects family land in all possible ways.[95] The community head can allocate land to members and strangers based on need. He collects tributes from tenants[96] and was not originally required to account to anybody.[97]

The democratic nature of customary land tenure ensures that every member has a right of:

(a) residence on the land.[98]

(b) ingress and egress, and the management of the land.[99]

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[95] Ajoke v. Olateju (1968) 2 ALL NLR 159. The position has been in place since Bassey v. Cobham (1924) 5 NLR 92 and also Aralawon v. Aromire (194) 5 NLR 90 where it was held that the family head could bind the family in contract relating to the family land.

[96] Onisiwo v. Attorney-General, Southern Nigeria (1912) 2 NLR 77.

[97] Re Hotonu (1889) 1 JAS pp 87 – 89. in which it was held that a family head was not strictly liable to give account of his stewardship. See also Balogun v. Balogun (1935) 2 WACA 290 at 299, per Graham Paul. Accountability is a recent phenomenon championed by authorities such as Prof. Elias.

[98] Ogunmefun v. Ogunmefun (1930) 10 NLR 82.

[99] Thomas v. Thomas (1932) 16 NLR 5. See also Lewis v. Bankole (1908) 1 NLR 81.

(c) A portion (and under certain circumstances, if he demands, a partition)[100],

(d) Proceeds of tenancy (such as tributes and rent),[101] and

(e) Removal of a head and the appointment of another.[102] This, it must be noted, is of relatively recent development.

The Head of family or of community manages the land in the interest of all the members of the community and is therefore in a fiduciary position with respect to other members. This means that he should not do anything radical to the land (such as permanent alienation) without prior consultation with the other members. Permanent alienation was not possible any way and he could grant customary tenancy without consultation. In the remote past, he could administer the land without any accountability to anybody. He would be the oldest member of the community or family and was revered as the representative of the ancestors. Therefore he is immune from challenge by younger members of the family or community. However, in modern times, he is required to account for the rents, royalties or tributes received. Now that alienation of

[100] Partitioning of land which destroys the communality of ownership, can be demanded by a member as recognised in Riccardo v. Abal (1920) 7 NLR 58. See also the more recent case of Piaro v. Tenalo (1976) 12 SC 31.
[101] Odunsi v. Bolaji (1962) LLR 217
[102] Suara Yusuf v. Yetunde Dada & Ors (1990) 4 NWLR pt 146 p.657. See also Fajuke v. Ogedengbe (1968) 1 ALL NLR 60 at p.63.

land has become possible, he must consult with the principal members before he alienates the land or any part of it, otherwise such alienation may be declared void at the instance of a suit by any member.[103]

Similarly no member of the family can dispose of land without the approval of the head, who is a kind of legal owner of the land (with the other members having several equitable ownerships).[104] In the area of present study, the head of the family or community as the case may be, is the person vested with the powers to allocate land. His agreement with other principal members of the family or community is merely a courteous one. He owes them no legal duty to consult or share tributes. He may be criticized but nothing more serious can happen to him if he should choose not to consult or share tributes. But once a portion is allocated, his authority over that portion becomes insignificant.

[103] Lukan v. Ogunsusi (1972) 5 SC 40.
[104] This is the principle laid down in Agbloe v. Sappor (1947) 12 WACA 187. See also Ekpendu V. Erika (1959) 4 FSC 79.

1.6.5 ACCESSIBILITY TO LAND AND ALEINATION UNDER CUSTOMARY LAND LAW

According to Aboki[105] and Elias[106], originally it was not possible for strangers to access land in communities in Africa. This was because land was not alienable. McDowell[107] stated that this was the main reason for attacks on the indigenous system of land holding by European traders, represented by the Liverpool Chamber of Commerce who needed land for commerce. They preferred freehold or very long leases on favourable terms in order to develop their interests more rapidly[108].

Alienation is the voluntary divestment, transfer, assignment, conveyance, sale, pledge, grant of tenancy or mortgage of land by the owner to another person. There are basically two types of alienation: permanent and temporary alienation.

Permanent alienation includes sale, assignment or conveyance. Temporary alienation includes granting of tenancy, pledge, loan, mortgage, lease or loan. Permanent alienation of land is a relatively recent phenomenon in Nigeria.

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[105] Aboki, Y., Introduction to Customary Land Law, (unpublished) Lecture Monographs on Land Law, Ahmadu Bello University, Zaria, 1998.
[106] Elias, E.O., Nigerian Land Law and Custom, Routledge & Kegan Paul Ltd., London, 1951.
[107] McDowell C.M., An Introduction to Problems of Ownership of Land in Northern Nigeria, Institute of Administration, Zaria, Nigeria, 1966. P.33.
[108] Ibid.

It was not the practice in the past to alienate land because land was considered to be held by its present owners in trust for future generations. Elias[109] quoted paragraph 91 of the West African Land Committee Report thus:

> A third principle (of land tenure) is that land is considered as still the property of the original settler and thus as belonging to the past, the present and the generations to come.

Also, testifying before the Lands Committee, this idea was put by one of the Chiefs of |Ijebu-Ode (the Elesi of Odogbolu) when he said: "I conceive that land belongs to vast family of which many are dead, few are living and countless members are yet unborn". Finally, in *Lewis v. Bankole* supra, the learned judge observed that "the idea of alienation of land was undoubtedly foreign to native ideas in the olden days".

This meant that non-natives could not acquire land in Nigeria, save the use of land as a customary tenant or as a pledgee because land, which belonged to indigenous communities or families, could not be sold (permanently alienated). Thus, under the customary land tenure system, all 'natives' were owners-in-common to the unconditional exclusion of outsiders.

[109] Op cit.

Aboki[110] states that the Europeans on arrival in the territory now known as Nigeria began to attack the system of land tenure that they met, because the indigenous system did not allow for foreigners such as themselves to manage, let alone, own land. They leveled many allegations against the system, describing customary land tenure as archaic, primitive, confused, hodge-podge and not performing to the expectations of the contemporary Nigerian society.[111] In *Lewis V. Bankole* supra[112], Speed J made a back-handed understatement characteristic of English euphemism, when he stated that:

> ".... I must not be understood to be saying that your customary law is timid, barbaric and archaic. There are a lot of its principles that are admirable even to those who are not makers of it. But certainly there are many objectionable features in it. The earlier the courts or the legislature give them some coup-de-grace the better".

As stated above, the crux of the problem was the inalienability of land under the customary land law, which made it impossible for the in-coming Europeans to obtain land in furtherance of their trade (exploitation of the virgin natural resources which they found abundant in Nigeria). For example, they needed to acquire land to build railways into the hinterlands for the purpose of evacuating produce to the sea ports.

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[110] Op cit

[111] Enimil v. Tuakyi (1952) 13 WACA 10 (Ghana). See also Kuma V. Kuma (1934) 2 WACA 178.

[112] (1908) 1 NLR 81.

They also needed to acquire land to build schools, houses of worship and public administrative buildings ostensibly to improve the 'natives' as a form of corporate social responsibility, but in actual fact, to facilitate their trade.

The first attack on the indigenous system came in the form of a seemingly commonsense, innocuous rider to the inalienability principle, to the effect that land could be alienated if members of the family were consulted[113], and that where the family head was not consulted, such alienation would be void *ab initio*.[114]. Whether 'consultation' meant 'consulted and agreed' is another point worth pursuing in another effort of this nature. As time went on however, the issue was no longer whether land could be alienated, but rather the conditions for valid alienation.

In the area of study, alienation is even a more recent phenomenon than among the Yorubas and the Ibos. Makar[115] states that among the Tivs, land " is a means of group identity and expression, is the property of a family group. It is not owned on individual basis". He says that the Tivs see land as the natural endowment from the ancestors, considered as

[113] Oshodi v. Dakolo (1928) 9 NLR 13.

[114] Ekpendu v. Erika (1959) 4 FSC 59.

[115] Op sit page 6.

sacred possession. The thought of alienating land instead of acquiring more, is not of the Tivs.

(a) The Customary Tenant

A customary tenant is a person who has asked for and has been given a portion of land, usually to farm on or reside on. It can also be for purposes of building a residential house and living in same. In *Okpala v. Okpu*[116], the Supreme Court held that the major incident of customary tenancy is the recognition of the rights of the overlord to the title of the property. The Court also explains that customary tenants now enjoy something akin to emphyteusis, *a perpetual right in the land of another*. This means as the Court states in (Holding 3) in the same case, that customary tenancy vests in the tenant the right of perpetual tenure or tenancy and therefore peaceful enjoyment as long as he does not misbehave.[117]

The customary tenant remains undisturbed *qua* the payment of tribute or rent, but the moment he threatens or denies the allordial right of the overlord, the tenancy will be determined in any suitable way by the

[116] (2003) 5 NWLR pt. 812 p.183.
[117] Misbehaviour includes denying the title of the overlord or in trying to alienate the land or by refusing to pay tribute to the overlord.

overlord. However, the same court held at Holding 2, that any misbehaviour will now attract fine and not outright forfeiture. Similarly in *Okoli V. Okoli*[118] where a customary tenant who inherited the tenancy from his father had developed the land with permanent structures over a long period of time, it was held that a tenant who has invested heavily in a land he considers a permanent abode, should not be ejected from his permanent structure but can be fined if he misbehaves. Similarly in *Uwani v. Akom*[119], relief against forfeiture for alienation without permission was granted on the ground that it would be inequitable to dispossess 310 tenants from land which they had occupied for 50 years, and upon which they had built 100 houses and planted many fruit trees, yielding an annual income of more than £1,000.

In the more recent case of *Salami v. Lawal*[120] , the Timi of Ede conveyed a land to the defendant, on which he had granted customary tenancy to the plaintiff who was in occupation. The Supreme Court held that the Timi cannot convey a land subject to customary tenancy which itself cannot be terminated during good behavior.

[118] (2003) 8 NWLR pt. 823 p.565.
[119] (1923) 8 NLR 19
[120] (2008) 7 SCNJ 196.

In the area under study, a customary tenant can be removed for bad behavior. This is particularly so if he tries to deny the overlord's title but it can be for even minor matters such as insulting the overlord in a marketplace or in a palm-wine bar. If he had planted economic trees, he is allowed to continue to come onto the land to reap fruits, but cannot lay claim to trees he did not plant, such as iroko, locust-bean, mango and mahogany trees that are not usually planted on farms in these areas. The question of permanent buildings hardly arise because it is difficult to find such buildings on farms and there are hardly any customary tenancies in the urban areas in modern times when permanent buildings are becoming the order of the day.

(b) Pledge

Pledge in customary land law means the temporary transfer of possession by the pledgor to the pledge as security for a debt. That debt is usually a loan of money but it can also be a facility that is not a direct loan of money, such as the bride-price for a wife. Elias[121] quoted the court's definition of pledge in *Adjei v. Dabanka*[122] as

> a kind of indigenous mortgage by which the owner-occupier of land, in order to secure an advance of money or money's worth,

[121] Elias T.O., Nigerian Land Lawe, 4th Edition, Swet & Maxwell, London, 1971, p.11..
[122] (1930) 1 WACA 63.

> gives possession and use of land to the pledge creditor until the debt is fully discharged.

There are two essential features of a customary pledge. One is the provision of money for the pledgor's immediate use. The other is the pledgee's right to possession of the property the subject of the pledge. Olawoye[123] commented that

> "a pledge is created when an owner of land transfers possession of the land to his creditor as security, or rather in consideration of a loan with the object that he should exploit the land in order to obtain the maximum benefit as a consideration for making the loan."

This was the basis of the decision in *Ufomba v. Ahuchaogu*[124]
With due respects, this statement gives a wrong impression. The intention of the institution of pledge is not that the creditor should recoup the value of his loan from the land and then return it, as the above definition seems to be suggesting. The retention of possession and use of the land by the creditor serves two purposes. The first and most important is security for the loan. The secondary purpose is the benefits derived from the use of the land which meanwhile represents the interest which the debtor should have paid.

A pledge can be redeemed no matter how old it is. Descendants can redeem pledge entered into by their forebears. As long ago as 1910, this principle was contained in a Memorandum on Native Land Tenure in the

[123] Olawoye, C.O., Title to Land in Nigeria, Evans Brothers Limited, Ibadan, 1974.
[124] (2003) 8 NWLR pt 821 p. 130.

Colony and Protectorate of Nigeria, that a living descendants could redeem a pledge created by their ancestors.[125] In *Akyirefie v. Breman-Esian*[126] WACA held that a pledge by one family member redeemed after a generation by another is still family land. Similarly it was held in *Okoiko v. Esedalue (1974)*[127] that where a member pledged his portion of communally owned land, it would be redeemable no matter how long it takes, and no matter how much the pledge must have spent in improving the land, such as building houses on it.[128]

(c) Strangers, Adverse Possession and Prescription

Adverse possession is the acquisition of title to land through long possession and use of it without challenge by the owner. It confers right of ownership on the possessor and is a recognized concept in most common law jurisdictions. In Africa however, it is a foreign concept which is not provided for under native law and custom. In other words, customary land law does not recognize adverse possession. This is because no land is ownerless under customary land law, just as no-one is landless. A family land cannot be said to have been abandoned to the

[125] C.W. Alexander, Colonial Office Legal Pamphlet Vol.1, Folio No.26.
[126] (1951) 13 WACA 311.
[127] [1974] FSC 15.
[128] Okoiko v. Esedalue & Anor (1974) 1 ALL NLR pt 1 p.452.

extent a stranger can claim it through long adverse possession. This unwavering position of the law was expounded in *Agyeman v. Yarmoah*[129] by Watson J in the following words:

> mere use and occupation for sometime cannot oust an original title, in other words, there is no such things in native customary law as prescriptive title.

This position of the law was reaffirmed by the Supreme Court in the case of *Alhaji Abdulwahab Odekilekun v. Mrs. Comfort Olubukola Hassan* [130] in which the term prescription was used instead of adverse possession, to the same effect. The contention of the defendant was that his grandfather settled on the vacant land which his own father inherited and had not been challenged by anyone. The defendant had also been on the land unchallenged until this suit, and that this amounted to laches. The Supreme Court held that no-one can acquire land by long usage amounting to prescription.

In a recent case of *Oni v. Olokun,*[131] based on similar facts, the Court of Appeal held that "there can be no ownership by prescription in

[129] (1913) D & F 56.
[130] (1997) 12 SCNJ 114.
[131] (1995) 1 NWLR pt 370 p.189

customary law, and that length of usage does not ripen invalid title of trespasser to a valid ownership of title". In that case, the plaintiffs traced their root of title to one Olumogbe the grand-ancestor by grant from the Owa of Obokun Ofokutu. The root of title of the original grantor, Owa Obokun Ofokutu himself was however, not pleaded, leaving a gap without any foundation laid to account for the gap. They lost the case at the appeal.

In ancient times, the idea of adverse possession did not arise, because once a family opens up a virgin parcel of land they immediately settled on it and farmed it. The Supreme Court approved this in *Okunzua v. Amosu*[132]. Similarly in *Ado v. Wusu*[133], a family who left their land for about 200 years were able to reclaim it, despite the improvements made by the adverse occupier-family in the meantime.

Prescription refers to legal rights that are incorporeal. It is the opposite of adverse possession which refers to possessory rights, i.e. rights of occupation of land. Aboki [134] has strongly held the position that

[132] (1992) 7 SCNJ 243.
[133] 4 WACA 96 and 6 WACA 24.
[134] Aboki, Y., Presecription: Its Applicability Under Native Law and Custom Determined. In Law, Justice and the Nigerian Society: Essays in Honour of Hon. Justice Mohammed Bello, Edited by Ayua, I.A., Nigerian Institute of Advanced Legal Studies, Lagos (1995) pp. 232 – 243.

prescription does apply to African customary land law. He stated that most writers have confused prescription with adverse possession. He attempts to clarify the position by stating that:

> prescription is a term that applies only to non-possessory property, e.g. the easement of right of way, easement of lateral support, the easement of uninterrupted or free flow of air or sunlight. Prescription does not therefore confer any right to possessory property like land.

The learned author then distinguishes adverse possession in these words:

> Adverse possession is a means of acquiring title to property by long undisturbed possession. The running of the statutes of limitation on the owner's action in ejectment is not only bars the owner's claim to possession, it also stops the owner of title and creates a new title on the adverse possessor.

However, the views of the majority of writers and those of judicial authorities are clearly expressed on the use of the term prescription instead of adverse possession and that it confers possessory rights where

applicable. This confusion has led to the conclusion that in Nigeria, prescription is used synonymously with adverse possession.

(d) The Intervention of Equity

The position of the law is that adverse possession cannot ripen to ownership. With due respects, this position of the law with regard to adverse possession is in certain cases, repugnant to natural justice, equity and good conscience. The law is that a person who once cleared a land in its virgin state will continue to claim ownership even when he has left the land for a considerable length of time. As stated by the court in *Oshodi v. Balogun*[135], the adverse possessor may even have been induced by the acquiescence of the real owner to incur expenses on the land, which is unconscionable.

The Supreme Court is in apparent sympathy with strangers who occupy seemingly ownerless lands for considerable length of time. This change in judicial thinking is captured in the dictum of Oputa JSC (as he then was) in *Atunrase v. Sunmolu*[136], when he stated that the principle in *Ado v. Wusu* should be exercised with caution and subjected to the

[135] (1936) 4 WACA 1.
[136] (1985) 1 NWLR pt 1 p.105.

repugnancy test in deserving cases as the WACA itself noted in the latter case, so that persons innocently in adverse possession and who have incurred what he termed 'pecuniary responsibilities' are not unduly dispossessed of their property.

This paradigm of judicial thinking has graduated to the doctrine of abandonment, which is an acceptable equitable solution in the light of modern necessity, where people now build costly long-lasting houses and other substantial improvements of long-lasting nature on land they honestly consider to be theirs. The doctrine has been applied in appropriate cases on equitable grounds, beginning from the case of *Akpan Awo v. Cookey Gam*[137].

[137] (1913) 2 NLR 100.

(e) The Rule In Akpan Awo V. Cookey Gam and the Principle of Abandonment

In *Akpan Awo v. Cookey-Gam*[138] the defendant had been in undisputed possession of the land in dispute with the full knowledge and acquiescence of the plaintiff for a period of 21 years, collecting rents and granting leases to people. It was held that even if the defendant had entered into possession contrary to the principle of customary law, it would be inequitable to deprive him of the land. This principle was later approved by the Privy Council in *Oshodi v. Balogun* [139] and other cases later. On the same principle, in *Annam v. Bin* [140] it was held that there is abandonment if the tenant leaves the land for a considerable time and the house he built on it had fallen into ruin.

Generally, strangers who enter into a land and make developments thereon are regarded as trespassers. However, if their occupation is long and adverse to the interests of the "owner", then the customary law equivalent of adverse possession must apply as a brand of the doctrine of estoppel against the 'owner". In *Aro v. Jaja* [141], the Jaja of Opobo on

[138] (1913) 2 NLR 100.
[139] (1936) 4 WACA 1.
[140] (1907) 12 WACA 177.
[141] (1961) LLR 200.

being sent on exile, came into Andoni land and settled. He exercised acts of ownership for upwards of 50 years, rights which were clearly adverse to those of the owners. When the people of Andoni sought to take their land back, the court held that they could not do so, having been estopped by customary adverse possession.

1.7 JUSTIFICATION (LITERATURE GAP ANALYSIS)

In the above literature, a vast amount of knowledge of customary land law has been reviewed. However, nowhere in the literature has the land tenure law and practices of the lower Benue Valley people have been brought to serious scrutiny. The efforts of Makar, Ayih, Dandaura and Ngheren, and other writers are primarily on sociological pedestal. The inclusion of customary land tenure in their works is cursory and is nothing more than efforts at covering farming as part of culture and sociology. Apart from these books however, there is no known research work focused on land tenure practices of these peoples.

There is therefore a big gap worth investigating, considering the vastness of the area of study and the fact that the area is agrarian where

farming under traditional practices is the sole occupation in the absence of industrial and other urban activities.

1.8 METHODOLOGY

The methodology adopted was two-folds. The first was desk research, in which the generally known land tenure practices and customary laws in Nigeria was brought to the fore, by exploring the existing literature to provide the conceptual framework. This included mainly the works of jurists and academic authorities, supported by case law and the provisions of various statutes.

The next stage is the fieldwork for the empirical work of gathering data from the peoples directly, on the customary land laws under which the peoples covered by the study hold land and alienate their interest. This was done via a questionnaire served on chiefs, opinion leaders and elders in each of the six major ethnic groups in the two states. Oral interviews also formed part of the process of data collection.

Public records, particularly relevant court records of proceedings in which particular customs have been proved, was also examined to support the interviews.

Headquarters of each of the six ethnic groups were visited for the purpose of conducting the research. Specifically, the field research involved visits to the under-listed locations. Questionnaires were served on, and interview held with, at least two prominent elders in each location, one of whom was a knowledgeable chief and another, a respected elder. The locations were:

(1) Tiv	-	Gboko,	Makurdi,	Katsina-Ala	
(2) Idoma	-	Otukpo,	Orokam,	Adoka,	Okpoga
(3) Alago -	-	Doma,	Oloshi,	Asakyo	Keana
(4) Eggon -	-	Nasarawa-Eggon,		Alushi,	Mada Station
(5) Gwandara	-	Gitata,	Gurku,	Garaku	Panda
(6) Mada -	-	Akwanga,	Andaha	Wamba.	

A total of 43 questionnaires were completed and 48 interviews were made.

CHAPTER TWO
MEANING OF LAND AND ITS SCOPE

2.0 INTRODUCTION

The importance of ascertaining the meaning of land lies in determining the scope of this natural endowment to man, in terms of things relating to it or fixed on it.

Things relating to land or appurtenant to it include easements, view, sunlight, air and right of way. Thus, the owner of Black Acre can say that his land includes a right of way through White Acre or that the owner of White Acre cannot block his view of a meadow by erecting a wall across the boundary of White Acre and his land.

Things fixed to land include minerals and permanent structures such as houses, roads, and trees and crops grown on land. Others are rivers, ponds, and even rock. Literature in other jurisdictions show that minerals and permanent structures are part of land, under the principle of *quic quid plantatur solo solo cedit*.

The meaning of land answers questions such as to whether a person's land in the communities under study, include or exclude any of the above things . In other words, the meaning of land determines whether the

principle of *quic quid plantatur solo solo cedit* applies in the communities under study.

2.1 DEFINITIONS OF CUSTOM AND CUSTOMARY LAW

Customary land tenure law rests on the agreement of the community as to what will happen when a certain event occurs with regard to land. The meanings of custom and customary law have to be established *in limine* in order to appreciate their limits in application to land. This is especially so when the English system of justice has come to be superimposed on the time-honoured ways of the "natives".

2.1.1 CUSTOM

Custom of a people is the body of usages, habits, procedures or ways of doing things, which all the people within the ethnic community accept as their *modus operandi* and which failure to do would attract punishment. They are a source of law in the sense that they have provided material for other law-constitutive agencies, such as legislation and precedent[142]. As Bird[143] defines it, it is rule of conduct, obligatory on those within its scope, established by long usage and has the force of law.

[142] Dias, R.W.M., Jurisprudence, 5th Edition, Butterworths, London, 1985, p.10.
[143] Bird, Roger, Osborn's Concise Law Dictionary, 7th Ed., Sweet & Maxwell, London, 1983.

2.1.2 CUSTOMARY LAW

Customary laws are the laws that guide the indigenous peoples of a particular geographical area, in this case, Nigeria as a whole, but the area of this research in particular. They are the basis on which activities and transactions were regulated before the arrival of the Europeans through whom the English legal system was foisted on the "native" people. Customary laws are still in existence and are applicable to transactions and social life, but a lot of them have been abolished by the English legal system through the instrumentality of the repugnancy doctrine.[144] In summary, the doctrine states that any customary laws that a judge feels to be repugnant to natural justice, equity and good conscience, or incompatible with any written law either directly or by necessary implication, currently in force, should be abolished. The doctrine has been widely used, the most recent being in 1997 in the case of *Mojekwu v. Mojekwu*[145]. As far back as 1944, Lord Wright in *Laoye v. Oyetunde*[146] explained that the doctrine was intended only to do away with ''barbarous customs". This was also reiterated by Lord Atkin in

[144] See S.26(1) of the High Court Laws of Lagos State; similar provisions exist in all High Court Laws throughout Nigeria.
[145] (1997) 7 NWLR pt. 512 p. 283.
[146] (1944) AC 170.

Eshugbai Eleko v. Officer Administering the Government of Nigeria[147] as well as a host of other cases[148].

Once a custom is proved in court by witnesses, it will be upheld unless it is repugnant. Most customary rules are not repugnant. A custom is not repugnant just because it does not conform with English rules of morality or 'civilised' logic. It is subjectively African and not objectively European. This was demonstrated in *Lewis v. Bankole*[149] supra and in *Dawodu v. Danmole*[150] where the Privy Council held that the *idi-igi* custom of the Yorubas was not repugnant because polygamy was a way of life of the Nigerians.

For the purposes of this work, the customary laws of the various peoples of this study regarding land tenure are the focus and will be examined against generally applicable Nigerian land law.

Obilade[151] defines customary law as consisting of usages accepted by members of a community as binding among them. He separates customary law into ethnic customary law and Moslem customary law. He

[147] (1931) AC 662 at p. 673.
[148] Edet v. Essien (1932) 11 NLR 47, Rufai v. Egbure N.A. and Maryam v. Sadiku Ejo, etc.
[149] Supra at page 34
[150] (1958) 3 FSC 46.
[151] Obilade, A.O., The Nigerian Legal System, Sweet & Maxwell, London, 1979.

holds that ethnic customary law is unwritten while the Moslem customary law is written. The learned author was obviously referring to Islamic law. It has long been recognized that customary law changes over time according to the peoples' progress through life. Obliade[152] quoted Osborne C.J. as saying in *Lewis v. Bankole*[153] that

> One of the most striking features of West African native custom… is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character.

This ever-changing character is made easy because it is unwritten. Customary law has been defined by the court in *Sokwo v. Kpongbo*[154] as a mirror of accepted usage. It could have been defined as mirror of accepted current usage. The court further stated that the particular custom must be in existence at the relevant time and must be recognized and adhere to by the community.

In *Mashuwareng v. Abdu*,[155] customary law was defined as an organic or living law of the indigenous people of Nigeria, regulating their lives and transactions. It is organic in that it is not static. It may change from time to time in the social evolution of the people, but it must be recognized as

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[152] ibid
[153] (1908) 1 NLR 81, @ pp 100-101.
[154] (2003) 2 NWLR pt 803 page 111.
[155] (2003) 11 NWLR pt 831 p. 403.

binding at all times. It is regulatory in that it controls the lives and transactions of the community that is subject to it.

2.2 THE SCOPE OF MEANING OF LAND

Land in the ordinary sense refers to the soil, field, ground or the solid, dried part of the earth. The inference from the definition is that land does not include what is permanently attached to it e.g. waters. This definition is insufficient for legal purposes. S.2 of the Property and Conveyancing Law of Western Region 1959 defines land this way:

> … land of any tenure, building or parts of buildings (whether the division is horizontal, vertical, or made in any other way), and other corporeal hereditament, also rent and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land.

The above definition agrees exactly with the opinion of Dalton[156] who defined land as this way:

> Land includes any tenure and mines and minerals, whether or not held apart from the surface, buildings, or part of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a manor, an advowson, and a rent and other corporeal hereditaments and an easement, right, privilege, or benefit in, over or derived from land; but not an undivided share in land.

[156] Dalton Patrick, Land Law, Pitman Publishing, 4th Edition, London.

Dalton's definition is the same as that contained in s.205(1)(ix) of the Law of Property Act 1925 of England. A recent definition by Burn[157] states that 'land includes the surface of the earth together with all the sub-adjacent and super-adjacent things of physical nature such as buildings, trees, and minerals". The above authors are Europeans. An African definition was supplied by James[158] who states that land under the English law includes the surface of the land, everything beneath the surface, and everything affixed to the land as well as the right of property over the air-space above the land. He states further that "land" in strict law includes all hereditaments (both corporeal and incorporeal).

"Corporeal" is physical, meaning the land itself and anything adhering to it such as walls or houses. "Incorporeal" is non-physical and includes inter alia, easements such as rights of way appurtenant to land and a number of legal notions such as profits and rent charges. Thus land under the English law is more than the mere visible plot of soil.

[157] Burn, E. H., Modern Law of Real Property, Butterworths, 16th Edition, London, 2000.
[158] James, Philip S., Introduction to English Law, 9th Ed., Butterworths, London, 1976.

Another statutory definition of land is to be found in the Interpretation Act[159]. Under S.18 of the Act, land is defined as -

> immovable property and everything attached to the earth or permanently fastened to anything which is attached to the earth and all chattels real, but does not include minerals.

The exclusion of minerals in this definition of land is based on the fact that minerals and mineral oils in Nigeria as well as waters are vested in the government. S.3(1) of the Minerals and Mining Act[160] provides as follows:-

> the entire property in and control of all minerals, and mineral oils, is under or upon any lands, in Nigeria and of all rivers, streams and water courses throughout Nigeria, is and shall be vested in the Federal Government of Nigeria, save in so far as such rights may in any case have been limited by an express grant made before the commencement of the Act.

It also means that no person can prospect, mine or remove minerals from any land in Nigeria without a lease or licence from the government. If the extraction is from the surface, such as open cast mines, the state government is the authority to grant a lease. However, if the extraction is from the depths, then a Federal Government Mining Lease is required under the Act.

[159] Cap I.23, Laws of the Federation 2004.
[160] Cap M12, Laws of the Federation 2004.

The combined effects of the Nigerian Aerospace Management Agency Act[161], Nigerian Civil Aviation Authority (Establishment) Act[162], and the Civil Aviation Act[163], further limits the scope of the meaning of land, to exclude the space above the buildings and trees. The air space belongs to the Federal Government of Nigeria. Similarly the Navigable Waters Act provides that free flowing rivers, fountains and streams do not belong to a family or person through whose land the water flows.

However, under the Minerals and Mining Act, certain local rights are preserved for the inhabitants of a locality who may continue to take minerals (e.g. salt, iron ore, soda, potash etc) from land outside a mining area provided it has been their custom to do so. In Keana area of Nasarawa State, salt is locally extracted from the soil without infringing the provisions of the Act. The Act provides that communities can extract without Federal or State government licence if that community was in the habit of doing so for subsistence. According to Osheshi[164] and other respondents, it is because of the presence of salt that part of the Alagos settled in Keana.

[161] Cap N90, Laws of the Federation 2004.
[162] Cap N94, Laws of the Federation 2004.
[163] Cap c13, Laws of the Federation 2004.
[164] Op cit.

According to Nwabueze[165], the concept of land goes further to include even abstract, incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and building of another. It is clear from this definition that land may have both natural and artificial content. Its natural contents which form the basis element of it, includes the ground and its sub-soil and things growing naturally on it.

Its artificial contents include buildings and other structures or trees. The question has arisen as to whether such additions form an integral part of the ground so as to accrue to the owner of the ground. Under the English legal system, the principle is that "whatsoever is affixed to the soil belongs to the soil". This is expressed in the Latin maxim as *quic quid plantatur solo, solo cedit* or more explicitly *as cujus est solum ejus est usque ad caeclum et ad inferos* (whose is the soil his, it is, even to the heaven and to the depth of the earth).

The legal conception of land though not free from controversy, is not in substance fundamentally different among writers. In the broad legal sense, land includes not only the earth or sub-soil but

[165] Nwabueze, B.O., Nigerian Land Law,Nwanife Publishers Ltd., Enugu, 1972.

also things on land such as houses, huts, farms and any improvement on the land. It is on this premises that Elias[166] has rightly observed that the Roman Law doctrine of *quici quid plantatur solo solo cedit* is a principle of English as well as Nigerian property law.[167] Elias gave a plausible explanation when he said that

> **like many other empirical rules of social regulation of a specific legal situation, the concept of the accession of a building or other structure to the land built upon is reasonable, convenient and universal.**

This means that if Mr. A. builds a house on Mr. B's land without Mr. B's consent, the house becomes the property of Mr. B. along with the land without any obligation on B's part to compensate Mr. A for the expenses incurred.. This principle is well stated, accepted and tested judicially. In the case of *Francis v. Ibitoye*[168] the plaintiff paid the sum of £26 as a deposit towards a proposed contract of sale of land between the plaintiff and the defendant vendor. The contract was after a consent judgment, abandoned. The plaintiff nevertheless built a house worth £120 on the defendant's land in Lagos without leave or licence. The plaintiff then sued the defendant in this action for total sum of £146 representing both the

[166] Elias Nigerian Land Law and Custom, p.202.
[167] It is submitted that it is a general principle that can be derogated from in appropriate instances.
[168] (1963) 13 NLR 11.

deposit and the cost of the house. It was held that although he could recover the deposit, he could not be compensated for the house on the above principle.

Similarly in *UAC v. Apaw*,[169] where the issue for determination by the court was whether the plaintiff could dismantle his house and take salvageable parts sequel to an unfavourable earlier judicial decision, the Court held that

> **…..by reason of the principle of law expressed in the legal maxim *quic quid plantatur solo solo cedit*, the building becomes annexed to and form part of the land.**

Similarly, in *Adepate v. Babatunde*[170], a mortgagor who built 6 more flats on the land after the commencement of the mortgage could not recover those flats after the mortgagee sold the whole land subsequent to the default of the mortgagor. The summary of the facts is that the plaintiff took a mortgage loan on a land on which he built a house. During the subsistence of the mortgage, he built 6 more flats on the remaining vacant land. He defaulted in his mortgage payments and the lender exercised a power of sale of the property, not only the original house but all the plot and what was on it. The plaintiff mortgagor sued, arguing that the 6 extra flats

[169] (1936) 3 WACA 114.
[170] (2002) 4 NWLR pt 756 p.99.

were not part of the mortgage. The court held that under the principle of *quic quid plantatur*…, whatever that was on the plot by way of houses, formed part of the plot of land. The case of *Gaji v. Paye*[171] was decided by the Court of Appeal on the same basis.

From the decision in *Francis v. Ibitoye* (supra), one may ask whether the person who built the house could remove the building in pieces. In *Nwongwu v. Agbo*[172] the court held that economic trees growing wild on community land belong to the community who owns the land, and not to the family within the community to whom the particular part of the land was apportioned. The fact was that two families within the Umuise Ete community were disputing over the ownership of 17 iroko trees sold by the defendant family. The family had argued that the part of land on which the iroko trees stood was partitioned to them and therefore they owned the trees. It was proved that the land was never partitioned. The court then held that "timber unlike farm crops, partake of the ownership of the land and goes with it". The court also held that they could be community trees on community land.

[171] (2003) 3 NWLR pt 807 p.344.
[172] Nwongwu & Ors v. Agbo & Anor (1960) IV ENLR 28, quoted by Elias T.O., Nigerian Land Law, 4th Edition, Sweet and Maxwell, London.

In *Orianwo v. Okene*[173]After deciding that the principle applies in a particular case, the court may need to make consequential order as to the property on the land. In *Ezeani and Ors. V. Njidike*[174], the court was called upon to decide whether a tenant can come back to the land to take building materials from the house built by him but left behind when the tenancy expired. The Supreme Court held that he cannot, because it would amount to trespass for him to enter into the premises that is not his, to remove property. The summary of the facts is that Umori people obtained a declaration against the Urankwu village. The respondent who was a member of Urankwu village and had built houses on the land, was given 5 years grace to stay on rental basis before leaving the land. In *Lawson v. Anfani*[175], the court decided similarly that once the principle applies, what is on the land belongs to the owner of the land.

A person who in disregard of protests and warning, yet proceeds to build on a disputed land runs the risk, since if it turns out that the land is not his, he will lose all the investment in the building. He may in addition be liable to pay damages for trespass, and an

[173] (2002) 14 NWLR pt 786 p.157
[174] (1965) NMLR 95.
[175] (2002) 2 NWLR pt 752 p. 585.

injunction to restrain him from entering the land or otherwise interfering with the possession of it by the real owner. This was the case in *Oso v. Olayioye*[176] where the court held that:

> **…. The defendant must have been aware of the risk he was taking in completing the building on the land in dispute. In the circumstances, the equity of the case is entirely on the side of the first plaintiff who took all possible steps to protect his title to and possession of, his property and to warn the defendant of his rights…..**

The court held further that:

> **….In spite of that knowledge, the defendant completed the building for which only the foundation was being laid at the time of the earliest warning. He has brought upon himself any loss he may incur as a result of the application of the principle of *quic quid plantatur solo solo cedit.***

It is submitted that in this instance, what the law tries to prevent is a deliberate attempt to take over a land that does not belong to the defendant. The defendant is not to be allowed to plead that he had expended efforts and resources on the land and therefore, he is entitled to occupy it. In other words, he is not to be allowed to benefit from his own fault. The principle has been applied in *Adebiyi v. Ogunbiyi*,[177] and in *Madam Adama Ibrahim v. Alhaji Bappa Yola*[178] where the court held that a tenant cannot re-enter the land he vacated in order to cut down trees he had planted when he was a

[176] (1966) NMLR 329.
[177] (1965) NMLR 395.
[178] (1986) 4 CA Pt 1 98.

tenant. Ollenu[179] agreed with this judicial view and was therefore in the same camp with Elias. So also was Coker.[180]

2.2.1 Was Elias Right ?

Elias[181] went further to state without qualification, that "in Africa, the principle applies in all cases"[182]. With great respect, this statement seems to be rather sweeping in dimension and is not in tune with many decided cases. Although the statement may be academically correct when viewed against the English notion of the principle, it is not totally so in Africa. For example, in parts of Idomaland, a tenant can re-enter into the land he had vacated at the end of his tenancy, to reap economic trees he planted while he was a tenant. In the case of structures such as a building, although the building may be attached to the land, yet it may in certain cases, not form part of the land. In the opinion of James,[183] :

> **originally, land under customary law meant the soil and soil only. Thus, a building erected by a person, even by a trespasser, on the land of another, did not become attached to the land of that other but remained the property of the builder.**

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[179] Ollenu, K., Customary Land Law in Ghana, p.49.
[180] Coker, F., Family Property Among the Yoruba. Page 45.
[181] Op cit
[182] Of quic quid plantatur solo solo cedit
[183] James, R.W., Modern Land Law of Nigeria, University of Ife Press, Ile-Ife, 1974, p.14.

In *Santeng v. Darkwa*[184] (a Ghanaian case), the question was whether a house built on a family land by one member of the family could automatically become the property of the family along with the land. WACA answered in the negative, and Strother Stewart, delivering the judgment of the court, made the following observation:

> **No custom was proved that when a house is built on the site of the remains of a family house, it becomes the family property. And I know of no such custom …. I can find no authority for the proposition that the mere using of the site brands the house with the stamp of family property; although of course, the site on which the house is built remains family land.**

In *Annan v. Bin*,[185] the appellant built a house on a land belonging to a family without the family's permission. The court held that the appellant had three months to dismantle and remove his building. The Court thus, recognized his ownership of the house. Obi[186], writing from the Ibo perspective, has stated that:

> **a remarkable aspect of African customary law is the fact that land does not include things growing on, or attached to, the soil and that neither economic tress nor houses form a part of the land on which they stand.**

[184] (1940) 6 WACA 1
[185] (1947) 12 WACA 177.
[186] Obi, S.N.C., The Ibo Law of Property, Butterworths, London, 1963, p.32.

Lloyd [187], writing from the Yoruba perspective, agrees with Obi and went further to add that in Yoruba customary law, a distinction is drawn between land (the soil) and improvements thereon. However, Coker[188], writing many years after Obi and Lloyd, disagrees with Lloyd and held that *quic quid plantatur solo solo cedit* in respect to buildings, which he claims is a feature of most legal systems, applies in Yorubaland. It is interesting that Olawoye[189], writing in the same year as Lloyd, may be right in holding the view that the controversy is far from settled. He proposes two tests for determining whether a fixture should be regarded as part of the land or not:

(a) The degree of annexation, i.e. whether it can be easily removed without injury to itself or to building(s), and

(b) The purpose of annexation, i.e. whether it was for the permanent improvement of the land or merely for temporary purposes, for the greater enjoyment and use of it as a chattel.

He advised that if the annexation is permanent, such as building, then it is a part of the land.

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[187] Lloyd, P.C., Yoruba Land Law, Oxford University Press, London, 1952, p.13.
[188] Op cit
[189] Olawoye, C.O., Title to Land in Nigeria, Evans Brothers Publishers Ltd., Ibadan, 1974. P.9.

It can therefore be ventured to say that in appropriate cases, the maxim applies but not in all cases. In *Nwogem v. Nzekwu*[190], the court held that a land declared to be that of the defendant in a previous suit, included the building erected by the plaintiff. The ratio decidendi was that the plaintiff defied the defendant owner of the land. Similarly, in *Okoiko v. Esudalue*[191], it was held that in the absence of contrary intention, that once a pledge is redeemed, economic trees on the land belong to the pledgor. In the area of current study, generally, economic tress planted by the pledgee remain that of the pledgee even after the pledge has been redeemed. This is particularly so in Idoma community.

It was observed that in Orokam in (western) Idomaland, it is common to find former tenants (including descendants) still coming into land they had long vacated, to harvest palm fruits and other fruits from trees planted during the tenancy, because in Idoma customary land law, the principle does not apply. This agrees with the views of Obi [192]and Lloyd[193].

[190](1974) 4 SC 138.
[191] (1974) FSC 15.
[192] Op cit
[193] Op cit

The position of Elias can therefore be regarded as a proposition rather than the position of the law when he stated categorically that in Africa, the principle applies in all cases.

2.2.2 Meaning of Land in the Communities Under Study

In the six communities under study, chiefs and opinion leaders were interviewed on the meaning of land in their respective communities. The interviews were meant to support the questionnaire responses as those who filled the questionnaires were not the same people interviewed.

The summary of their responses are presented below.

Table1: Summary of Items forming Part of Land in the Communities under study

Items / Community	Rivers And Streams	Mountains And Hills	Forests	Naturally Growing Trees	Planted Trees	Fish Ponds / Lakes
Tiv	√	√	√	√	X√	√
Idoma		√	√	√	X	√
Alago		√	√	√	X√	√
Eggon	√	√	√	√	X√	√
Mada	√	√	√	√	X	√
Gwandara	√	√	√	√	√	√

Notes: (a) √ means yes, the items marked are part of land;

(b) X means no, the items marked are not part of land.

(c) X√ means that under certain circumstances the items

marked are part of land

2.2.2.1 Meaning of land among the Tivs

In Tivland, rivers, streams, mountains, hills, rocks and fish ponds are part of land. A family on whose land a stream or river passes, is the owner of that extent of the stream or river within its land, but not beyond. If a river forms a boundary of two communities, both communities share the river, up to the middle of it. If a river passes through a community, that part in that community is its own. Cases had never risen where a community dammed a river and prevented it from flowing through another community downstream.

Forests and naturally growing trees are also part of community land. The family member on whose portion of land the naturally growing trees stand is not the owner. These days of lumbering, the proceeds from selling such trees to lumbering contractors go to the family or community as a whole, usually to be shared.

However, as to trees planted by an occupier, they are the property of the planter if the planter is a family member who has been farming that land on which the trees are growing. If the planter is a

customary tenant, the trees are not his if prior agreement was not made before planting.

2.2.2.2 Meaning of land among the Idomas

In Idomaland, rivers, streams, mountains, rocks and fish ponds are part of land. A family on whose land a stream or river passes, is the owner of that extent of the stream or river within its land, but not beyond. If a river forms a boundary of two communities, both communities share the river, up to the middle of it. If a river passes through a community, that part in that community is its own. Cases had never risen where a community dammed a river and prevented it from flowing through another community downstream.

Forests and naturally growing trees are also part of community land. The family member on whose portion of land the naturally growing trees stand is not the owner. These days of lumbering, the proceeds from selling such trees to lumbering contractors go to the family or community as a whole, usually to be shared.

However, as to trees planted by an occupier, they are the property of the planter if the planter is a family member who has been farming that land on which the trees are growing. If the planter is a

customary tenant, the trees are his and he can re-enter the land to reap them.

2.2.2.3 Meaning of land among the Alagos

The entire land in Alago belong to the people, and vested in the chief. All things attached to the land, belong to the whole community, except trees planted by a particular occupier. Therefore, naturally growing trees, hills, rocks and streams belong to the whole community, but administered by the chief. These are not the property of the family or community member who may be farming around such items. However, a fish pond rehabilitated by a community member whose apportioned farmland covers it, is agreed to belong to that community member during good behavior, in the same way that the apportioned land can be said to belong to him as an occupant.

As the entire land is administered by the chief on behalf of the people, customary tenancy is rare and therefore the position of the tenant who had planted trees is of no importance.

If there was a dispute in respect of fish ponds, streams or rivers, the dispute is resolved in the chief's palace.

2.2.2.4 Meaning of land among the Eggons

In Eggonland, rivers, streams, mountains, rocks and fish ponds are part of land. A family on whose land a stream or river passes, is the owner of that extent of the stream or river within its land, but not beyond. If a family member's land includes the items, then they are deemed to be his to exploit. If a river forms a boundary of two communities, both communities share the river, up to the middle of it. If a river passes through a community, that part in that community is its own. Cases had never risen where a community dammed a river and prevented it from flowing through another community downstream.

Forests and naturally growing trees are also part of community land. The family member on whose portion of land the naturally growing trees stand is not the owner. These days of lumbering, the proceeds from selling such trees to lumbering contractors go to the family or community as a whole, usually to be shared.

However, as to trees planted by an occupier, they are the property of the planter if the planter is a family member who has been farming that land on which the trees are growing. If the planter is a customary tenant, the trees are not his if prior agreement was not made before planting. Customary tenancy is rare among the Eggons. Due to this, there had not been a recent case to refer to.

2.2.2.5 Meaning of land among the Madas

In Madaland, rivers, streams, mountains, rocks, hills and fish ponds are part of land. A family on whose land a stream or river passes, is the owner of that extent of the stream or river within its land, but not beyond. However, there is an important hill with revered caves in Andaha which belongs to the whole community.

If a river forms a boundary of two communities, both communities share the river, up to the middle of it. If a river passes through a community, that part in that community is its own.

Forests and naturally growing trees are also part of community land. The family member on whose portion of land the naturally growing trees stand is not the owner. These days of lumbering, the

proceeds from selling such trees to lumbering contractors go to the family or community as a whole, usually to be shared.

However, as to trees planted by an occupier, they are the property of the planter if the planter is a family member who has been farming that land on which the trees are growing. If the planter is a customary tenant, the trees are not his if prior agreement was not made before planting.

2.2.2.6 Meaning of land among the Gwandaras

Among the Gwandaras, things such as rivers, streams and fish ponds are part of land. A family on whose land a stream or river passes, is the owner of that extent of the stream or river within its land, but not beyond. There are many rocky hills. They are considered part of the land. If a river forms a boundary of two communities, both communities share the river, up to the middle of it. If a river passes through a community, that part in that community is its own. Cases had never risen where a community dammed a river and prevented it from flowing through another community downstream.

Forests and naturally growing trees are also part of community land. The family member on whose portion of land the naturally

growing trees stand is not the owner. These days of lumbering, the proceeds from selling such trees to lumbering contractors go to the family or community as a whole, usually to be shared.

However, as to trees planted by an occupier, they are the property of the planter if the planter is a family member who has been farming that land on which the trees are growing. If the planter is a customary tenant which is rare, the trees are not his if prior agreement was not made before planting.

CHAPTER THREE

3.0 METHODS OF ACQUISITION OF LAND AMONG SIX MAJOR COMMUNITIES OF THE LOWER BENUE VALLEY

The lower Benue River Valley of Nigeria comprises the Tivs, the Idomas, the Alagos, the Eggons, the Mada and the Gwandara communities. Methods of land acquisition among these communities are generally similar. However, due to the nature and methods of settlement of these communities in the area, there are major variations or differences which account for particular customary land law and tenurial systems practiced in a particular community. The major differences are contained in the following exposition.

3.1 FIRST SETTLEMENT

One outstanding fact about the method of acquisition of land among the major communities under study is first settlement. The family came unto the land when the land was virgin, meaning that no family or community was in occupation or possession prior to such settlement. Some these communities conquer land by driving away previous inhabitants. This was mostly restricted to the Tivs. Majority of them however, acquired land by discovering virgin hitherto uninhibited land and settled on it.

They thereby became the owner of the land in a radical, absolute sense. It is the major method of land acquisition within the area under study.

3.1.1 **First Settlement Among the Tivs**

The Tivs originally obtained their lands by first settlement on vacant lands[194]. They soon engaged in outright conquests to expand their territories. They pushed other communities forward in all directions. These communities included the Jukuns to the north, the Ishiboris and the Iyalas and Ogojas in the present Cross Rivers State, and relatively recently, the Idomas to the south, and the Alagos to the West. As earlier quoted from Makar[195], land acquisition among the Tivs is usually through conquests won in battles. According to Ayih[196], even in the present-day Tivland, they still conquer lands belonging to communities such as the Jukuns to the north in Taraba State, the Ogojas to the east in Cross River State, and the Idomas to the south in the same Benue State[197]. They occasionally fight the Agatus and the Alagos to the north-west in Nasarawa State. According to Makar[198], they are driven by necessity of a newly married man to acquire land of his own both for subsistence

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[194] Tesemchi Makar, The History of Political Change Among the Tiv in the 19th and 20th Centuries, Fourth Dimension Publishing Company Ltd., Enugu, 1994.
[195] ibid.
[196] Ayih, S. O. (Abaga Toni), Nasarwa State: Past and Present, Umbrella Books, Abuja, 2003.
[197] Oseshi of Oloshi, The History of Alago People (Installation Handbook), Keana, Nasarawa State, 2006.
[198] Op cit Makar.

farming on which to raise his new family line and for raising tax money. On arrival in the present Benue State, the Tivs settled together as one compact community in the Katsina Ala plains. This was for strategic reasons since they fought their way there in fierce battles. As the community grew, however, land became a problem and they started to necessarily expand outwards in all directions.

When a man married, he needed to have his own farm to feed the new line of family that was coming up. But since a newly married man had no land to inherit from his father who might still be living, the alternative was for him to fight for and conquer land from others, usually those of other surrounding tribes. Immediately after the second child, a young father would detach his wife from the tutelage of his mother, to branch out in search of his own land to conquer. In Tivland, the land acquired by a man was divided up among his wives (a normal Tivman usually married more than one wife)[199]. The wives tended the land so shared out, with their respective children and a male child who married, began to look for his own land outside the community to start a new line of family.

[199]Elder Kondom Iorhemba lives in Vandekya, Benue State. The interview, for which we are indebted to him, was held on 12th April 2007.

Kondom[200] further stated that a newly married Tivman would leave the community to conquer his own land for two main reasons:

(1) he usually needed a large expanse of land for farming which he could not easily obtain at home because his mother would still be farming the portion given to her (and her young children) by her husband,

(2) Witchcraft. It is believed that if a person move away from familiar family members who might bewitch him and his new wife, his family and himself would be safe because it was believed that witchcraft affects co-members of the family more than outsiders).

Makar[201] states that this unending quest for land and the fact that land is not for ever abundant, meant that the Tivs are always courting quarrels over land with neighbouring communities. He emphasizes further, that:[202]

> The dispersal (of the Tivs in the Katsina-Ala plains) was motivated by the desire to secure more lands for sufficient foodstuffs to feed the ever growing population.

[200] Ibid.
[201] Op cit.
[202] Makar op.cit

It can be clearly seen therefore, that conquest in the context of the Tiv community becomes a permanent feature. They stayed neatly together when they arrived at the Katsina-Ala plains and had to necessarily push in all directions when the land in their immediate neighbourhood become insufficient as new families were created. The conclusion is that this is the reason for their expansion in Benue State and later, into Nasarawa and Taraba States.

3.1.2 **First Settlement Among the Idomas**

The Idomas arrived from the center of the Kwararafa Kingdom and settled in their present land in Benue State. Osheshi[203] stated that they found a large expanse of land on which they have inhabited unto this day. The Andoma[204] confirmed this in an interview in his palace. The original acquisition was by first settlement on vacant hitherto uninhabited land. Osheshi[205] stated that on approach of the large group that moved westwards after the collapse of the Jukun kingdom, the small pockets of settlers, probably of Ibo race, fled westwards. It is a common observable fact, that Idoma names and culture has Ibo semblance. Elder Augustine

[203] Narrated by the Osheshi of Oloshi at his installation in 2006, and confirmed at the Palace of the Andoma by Elder Adra, Historial Assistant to the Andoma on 18th May 2007.
[204] Interview with Andoma of Doma, Nasarawa State, 13th June 2009.
[205] Ibid.

Agbo Ogwuche[206] stated that this may be due to inter-marriages with a few Ibo people who surrendered and became part of the Idoma kingdom after the conquest of land at the western part of Idomaland. It is interesting that the Idomas have scattered settlements. The vacant land was wide and the people loved (and still love) space, hence they scattered to fill the land. This ensured that all families had enough land right from the beginning and thereafter has no need to push into new territories as new families grew out of existing ones. For example, in Orokam District,[207] the five Clans[208] that made up the District, divided the conqured large peace of land among themselves from the beginning, with the Ai-Ona adding more land by pushing the Okpoga[209] Community far beyond what their ancestor (Ona) and his descendants needed for many centuries to come. This is common to other districts in Idomaland. Conquest is therefore not a permanent feature of Idoma people's land acquisition process.

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[206] Interview with Elder Augustine Agbo Ogwuche on 2nd January 2009 in Orokam, Ogbadibo LGA, Benue State.
[207] Orokam, an Idoma community, is in Ogbadibo Local Government Area of Benue State.
[208] The Clans are: Ai-Ona which broke away from Otukpo, Ai-Oko which broke away from Adoka, Ai-Agboriko which was a product of inter-marriage with Ibos of Nsukka, Ai-Akor and Ai-Iru (also known as Ai-Inamu after their mother).
[209] Okpoga is the principal community in the neighbouring Okpokwu LGA, who were driven past the northern banks of the Oprokoto Fountain in the Inter-Community wars waged by the Ai-Ona (Ona and his children) in 1724-1727.

3.1.3 First Settlement Among the Alagos

According to Oshesi of Oloshi[210], the Alagos crossed the River Benue at Makurdi and settled first at Oba'osi, a vacant territory near the present Keana in the present Nasarawa State. He states further that from there, the Alagos spread out, settling on vacant lands westwards to the present day Doma Local Government, and eastwards to Asakyo and centrally at Keana and Obi Local Governments. The Oseshi thereafter found Aloshi near Oba'osi in 1232 AD. Aloshi has remained the seat of the line of Osheshis unto this day. According to the Osheshi, all the land they settled on was vacant at the time the Alagos discovered them.

Socially, the Alagos live in close collectivist community. Anywhere they arrived and settled, they hold the land communally. All land in Alagoland belongs to the community and held in trust by the chief, who in the case of Doma is the Andoma, and in the case of Oloshi, is the Oseshi for example. Perhaps, the Alagos are one of the few people who hold land in a pure communal mode where there is no individually owned land. To the Alagos, settlement ended when arrived in the southern local government areas of Nasarawa State.

[210] Op cit.

3.1.4 First Settlement Among the Eggons

During the interview, Chief Ezhim Akwashiki[211] stated that the Eggons acquired their land not by fighting people but by occupying vacant land in the hilly territory now in the central Nasarawa State on arrival from the area known today as Borno State. Other respondents agreed to Chief Akwashiki's statement.

As stated earlier, Ayih[212] stated that the Eggon ancestors migrated from the Kanem-Bornu Empire under their leader, Abro-Agbi in search of land and settled in Nasarawa Eggon in middle of the present Nasarawa State. There, they found uninhabited land and settled on it. From there, they spread in opposite directions southwards and northwards. They therefore occupy much of the territory up to Akwanga to the north and as far as Lafia, Asakio, Adogi and Agyaragu to the south. After settling on this large expanse of hilly land, the Eggons did not, and have not, up to this day, embarked on any noticeable conquest to expand their territory further. Although they are warriors of note, their raids and wars were purely to seize property of their neighbours and strangers that came

[211] ,Chief Akwashiki is an octagerian blind retired health superintendent. He granted a very illuminating interview at Alushi near Akwanga with the assistance of his son, Barrister Ben Akwashiki, who helped with interpretation where the old lacked words in English to explain his points, We are deeply indebted to him for this interview.

[212] Op cit.

across their land[213], rather than wars of conquests. They were also known to be great slave dealers or merchants[214].

3.1.5 First Settlement Among the Madas

Land acquisition among the Mada people is not recorded at all. In fact, Dandaura and Ngharen[215] are of the view that the Mada people originated from where they are found and that they did not come from anywhere. But an elder, Musa Gigya[216] told this researcher that they traced their origin to Numan in Adamawa State from where they came to settle on the land around Akwanga in Nasarawa State, where they are found today. He stated that the people originally came to trade in tin and that Akwanga was a trading center at that time. Dandaura and Ngharen[217] stated after pursuing two tenuous proposals that cannot stand serious scrutiny, that they found that the Mada people have no generally accepted 'legend or folklore tale of their ultimate origin', and

[213] Op cit Danduara and Ngharen
[214] Discussions with Prof. Y. Aboki, Faculty of Law, Ahmadu Bello University, Zaria in February 2011, who graciously shed more light on the activities of the Eggons of yore..
[215]Dandaura, E.S. and Ngharen, A.Z., Mada People and Culture, Victory Family Books Ltd., Abuja, Nigeria, 1977. p. 5-9.
[216] Interview with Musa Gigya, interview at Andaha, ancestral home of the Madas, near Akwanga on 2nd May 2009. We are indebted to him for expounding on the Mada history.
[217] Dandaura, E.S. and Ngharen, op sit.

therefore agree with Isichie[218] that the Madas are autochthonous, i.e. they originated where they are found.

There is therefore no generally accepted evidence of any method of land acquisition as far as the Madas are concerned.

3.1.6 First Settlement Among the Gwandaras

The Gwandaras traced their origin to Kano from where they left during the reign of Muhammadu Runfa (1476 – 1513)[219] in protest against Islam and moved southwards to Zaria. According to Ayih[220], they had to leave Zaria because they resisted the payment of tributes demanded of them. He stated that they then moved further southwards to settle on the hills called Tudun Gitata in the present Karu Local Government of Nasarawa State.

Elder Madaki Makama[221] said that when they saw the expanse of virgin land before them, they hailed it with an exclamation: “Ga filin tata” which gave the name Gitata to the headquarters of the Gwandaras in present Karu Local Government of Nasarawa State. Other respondents agreed with this narration. They stated further that from Gitata, the Gwandaras

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[218] Isichei, Elizabeth, Studies in the History of Plateau State, Nigeria, MacMillian, London, 1982, p.7.
[219] Ayih, S. O. (Abaga Toni), Nasarwa State: past and Present, Umbrella Books, Abuja, 2003.
[220] Ayih, op cit
[221] Elder Madaki Makama, Chief of Zango and former Madaki of Gitata, Kau GLA, Nasarawa State, Interview on 17th June 2009.

spread out to other areas such as Kare, Padan Karshi (where they are known as Wambaya), Uke, Karshi and Gurku in Karu LGA and in Garaku in Kokona LGA. They also moved southwards and could be found in large numbers in Giza LGA and Dederi (to the south of Lafia).

Another respondent, Elder Seriki[222] stated that in all the areas where they dominate, they spread there when no other community was occupying land there. Elder Seriki also stated that they therefore did not fight to gain their lands. Since the lands were large and fertile, the Gwandaras saw no reason to expand their territory by fighting to conquer more lands.

3.2 INHERITANCE OF LAND

Inheritance is acquiring by devolution of property once owned by a forebear. In Nigeria where the custom is patrilineal, this means acquiring property once owned by a father or backwards on the father's line of relationship. Among the peoples of this study, inheritance is a recognized method of acquiring land. In he majority of the communities under study, inheritance is a right while in one particular community, is a mere privilege.

3.2.1 Inheritance Among the Tivs

[222] Interview with Elder Seriki in his house in Rijiya Quarters, Gurku, 9th February 2009.

The land holding system in Tivland allows for inheritance of a man's farmland by his children. This is on the basis of stirps. That is, portions are shared out to the children on the basis of mother's portions, which is radically different from other communities in this study. Elder Kondom[223] explained that those from a particular mother share what is their mother's portion, since polygamy is the rule of the day in Tivland. Usually, according to the elders, who all agree on the point, men who have established their own families do not as a rule, come "back" to share lands with their younger brothers on the death of their father: it is considered the mark of a man to conquer his own land.

Daughters have no portions during the allocation of inherited land in Tivland. It is the male children that inherit their fathers. Widows are allowed on their late husbands' land for life-time on usufruct basis. They are merely left on it, as long as they are alive and residing in their late husbands' compounds. To this extent, they have life interest only.

[223] Op cit

3.2.2 Inheritance Among the Idomas

In Idomaland, inheritance of land is restricted to the male children of the deceased landowner. Allocation is done on individual basis and not per stirps, unlike the Tiv culture. This means that, even in polygamous families, portions, according to the number of wives are not recognized.

Women do not receive allocations of inherited land as of right. Widows and daughters who are in their father's house are usually given portions to farm on, but it is not a right; it is rather a favour.

Children below the age of puberty are not given portions but on reaching puberty, they will be given portions on demand, usually from general portions left unalloted during the initial allocation or those left by family members that die without offsprings. Chief Augustine Agbo Owuche, an elder and Chief Augustine Egwu Ameh, another elder both agreed during the interview that young children are themselves inheritance properties along with widows. The two elders stated further that custom demand that they be tended to by mature heirs who may be older children of the deceased landowner or near relations such as brothers and paternal cousins.

Inheritance in Idomaland is along agnatic or paternalistic line and not matrilineal.

3.2.3 Inheritance Among the Alagos

There is no true inheritance of land among the Alagos. This is because the land belongs to all the community held in trust by the ruler. Children of a deceased farmer may continue to use the land allocated to him during his lifetime, but they cannot be said to have really inherited him; rather they have taken the farmland as individual members of the community themselves as of right. This position is the best illustration of Aboki's[224] statement that in Africa, land use is analogous to a seat in a theatre; as one leaves, another comes and sit in his place. To this end, even women can be given portions as well as men and there is no question of one member of the community becoming a property of another.

According to the Secretary to the Andoma of Doma, Chief Musa Usman Addra, the Sardaunan Doma[225], the Alago community is a family where

[224] Op cit

[225] Interview with Secretary to the Andoma of Doma, Chief Musa Usman Addra, the Sardaunan Doma who was mandated to respond to the research questionnaire as the authorized Palace historian, on behalf of the Andoma, on 18th May 2007. We are indebted to him for granting this interview.

no-one is lord. Even the Andoma is not a lord but a leader, representing the central authority of the Alago custom. He too, takes a portion for his own farming. He states that there is no stool land which he controls differently from other lands within the kingdom.

3.2.4 Inheritance Among the Eggons

Respondents during the interview, stated that male children inherit their fathers' land in Eggonland. He stated further that female children may also be given portions, depending on need but not as a right. Widows in Eggonland, according to him, do not need a portion of land. This is because they live on it during their lifetime and cannot be driven away on the death of their husbands.

3.2.5Inheritance Among the Madas

There has not been a community-wide cultural norms of land tenure in Madaland. This is obviously because there was no central government of any kind until recently when the Chum Mada stool was created. However, the Madas practise inheritance culture that recognizes a qualified agnatic succession to rights. The qualification is that males inherit from those older than themselves. Thus, male Madas inherit their

fathers. One interesting aspect of Mada culture as stated by Loko[226] is that fathers cannot inherit their children's property (even where the deceased children bought land) but that mothers, brothers and sisters of deceased persons can inherit them. Loko stated that as for females and under-age children, they do not inherit at all except where the deceased had a living father, i.e. where the deceased pre-deceased his father. Loko also state that in the present era where land can be sold, a female who buys land is treated as a male for the purpose of inheritance if she dies.

3.2.6 Inheritance Among Gwandaras

Mallam Madaki Makama, an elderly Gwandara leader based in Zango near Gitata, during one of the interviews, told this researcher that the Gwandaras recognize polygamy strongly and that inheritance is based on portions allocated to children of each wife of the deceased landowner. This practice is similar to that found in the Tiv culture and it is still adhered to by the large part of the population of Gwandaras who are not Muslims. As for those who are muslims, the distribution of their inheritance is according to the Islamic dictates. He states that the wives do not need portions because, the land is first and foremost allocated

[226] Loko, Haruna, Mada Native Law and Custom, Ministry of Justice, Government Printer, Jos 1992.

among the children on the basis of stirps; those from particular mother take their portions and then if they like, they later share their mother's portion among themselves or hold such portions communally, which is the usual practice.

3.3 APPORTIONMENT AND PARTITION

In the communities studied, apportionment is the popular mode of allocating land to members of the family. In Tiv community, land is first apportioned to the wives, and then to the male children of each wife, from that wife's portion. In Idoma community, male family members are given portions as they attain adulthood. In Alago community, allocation of portions is done by the chief. Among the Eggons, Madas and Gwandaras, allocation is done by the family head to needy male adults.

Partition is not a mode of acquiring land in any of the communities studied.

3.4 PURCHASE

Purchase of land is a recent phenomenon. According to Aboki, the Europeans made this possible by persistent attack on the local custom they met on arrival. This made it possible for foreigners to have access

to land. It has also made it possible for indigenous people to acquire land outside their communities without conquests or discovery of virgin land. This is especially so because virgin land are virtually non-existent in the present time. Urbanization has also put strain on land acquisition. Although the custom is there, modifications have become necessary within the communities.

3.4.1 Purchase Among the Tivs

Customarily, land cannot be sold in Tivland. Makar[227] stated that land was a treasured possession among the Tivs and that it was a mark of the worth of a man and his family if he had a large expanse of land which he could call his own. Makar states further that:

> Added to these needs for land acquisition was another important consideration attached to land. The possession of land *per se* became an end itself because the concept of *tar* rested on the possession of land. Land thus became a political consideration.

Makar explained that the basis for this view of land by the people and why land should be alienated under Tiv customs was that:

> Land itself, as a means of group identity and expression, is the property of a family group. It is not owned by individual basis. Land is the natural endowment from the ancestors. People outside a family group cannot claim a share of family land. Any impression, as created by earlier writers such as Paul Bohannan, that "land is not property among the Tiv" cannot therefore be possibly true. Although the land is the group property, the group cannot sell it. The land

[227] Op cit.

> belongs to the dead, the living and those yet to be born. Sale of land with all the political connotations attached to *tar* would be a violation of the rights of those yet to be born. **...**

With this view of Makar, an authority on Tiv culture, there is hardly anything more to be said about the inalienability of land in Tivland by way of sale. However, in modern times, land is sold freely in the urban and sub-urban areas such as Gboko, Katsina-Ala, Zaki Biyam and Makurdi. In the villages however, land is still held communally and is not freely sold.

3.4.2 Purchase Among the Idomas

Land is inalienable in Idomaland in the past. It was easy for the principle to hold because land was in abundance and there was no family or community without adequate land. Strangers were granted tenancy rather than sale of land to them. The Idomas, like their Tiv counterparts, enjoyed the recognition that came with the ownership of land. It was however, not because land was scarce but because land provided all the needs of the people. Land was held to be almost sacred. Perhaps that was the basis for festivals and deities of fertility. Some of the festivals were the *Ejealekwu* festival held at the outset of harvest season and the *Egiri Okpayisibonu*, the new yam festival.

However, in modern times, land is sold freely in the urban and sub-urban areas, such as Otukpo, Otukpa, Orokam, Okpoga and Ugbokolo. In the villages however, land is still held communally by families and outright sale is still rare.

3.4.3 Purchase Among the Alagos

In Alagoland where the whole land belongs to the Community. In the past, it was preposterous to contemplate sale of land. No member of the community would think of selling his allotted portion of land. No member of the community could equally think of buying land from a fellow community member. *A fortiori*, no stranger could come into the community and desire to buy land. But in the urban areas and due to changing circumstances, especially since the creation of local governments, it has become possible to notice sale of land in the local government headquarters and other urban and sub-urban areas to strangers by those whose portions are within those areas.

Chief Musa Usman Addra, the Sardaunan Doma[228] admitted that today, Alago people in the urbanizing areas such as Doma in fact sell land

[228] Ibid at p.87

which they control as incidence of inheritance from their forebears. Chief Musa Usman Addra further stated that such acts are customarily wrong but that the Andoma-in-Council and other chiefs have been condoning it in order to attract development. People who buy such land are mostly strangers who had come to build modern residential and commercial properties in those urbanizing areas.

3.4.4 Purchase Among the Eggons

The Eggons occupied and still occupy hilly lands that they cannot possible exhaust in the near future except for development that bring other peoples into the Eggon territory[229]. Therefore sale of land was not and is still not part of Eggon culture. Elder Ezhim Akwashiki[230] told this researcher that although there are no community lands and no stool lands in Eggon culture, families do not culturally sell land.

Elder Akwasiki lamented the trend whereby land is now a commodity nowadays in the urban and sub-urban areas such as Nasarawa Eggon, Namu, Asakiyo, Kagbu, Adogi, Mai Akuya, Riri, Arikiya and Awoma Bedi.

[229] Ayih op cit
[230] Op cit.

3.4.5 Purchase Among the Madas

Loko[231] states land is not a commodity for sale in Madaland. Although according to Elder Gigya[232], land in Madaland is not held on community basis, but rather on family basis, the family members did not sell their land to outsiders. Members obtain portions as of right. According to Loko[233], sale of land in Madaland is a recent phenomenon and that it is restricted to residential/commercial plots. This means that sale of land is restricted to urban areas.

3.4.6 Purchase Among the Gwandaras

Under the Gwandara customary land tenure practice, land is not saleable. Elder Madaki Makama[234] stated that land is regarded as spiritual and therefore has no monetary price. It is what is put on the land that can be sold, e.g. crops and economic trees. Elder Makama stated further that the Gwandaras were originally *Bori* traditional religionists and therefore believed in the spirit of the land as well as the spirits of the dead, which reside in caves. Makama stated that the Gwandaras believe that if land were to be sold, the spirits would not have places of abode. This gives the impression that the land would be taken

[231] Loko, H., Mada Native Law and Custom, Ministry of Justice, Jos, 1992.p.43.
[232] Elder Madaki Makama, Chief of Zango and former Madaki of Gitata, Kau GLA, Nasarawa State, Interview on 17th June 2009.
[233] Loko op cit.
[234][234] ibid

away. Perhaps, it means that ancestral spirits will depart from a land sold to some-one outside the community.

It is however, noticed during the research that land are now being sold around the major Gwanadara-controlled sub-urban areas such as Gitata Town, Bagaji, Tatara and Gurku.

3.5 CUSTOMARY TENANCY

Customary tenancy is a grant whereby a holder or customary owner of land allows another person outside the family or community to occupy a portion of land under his control. It is trite under the customary land tenure in Nigeria generally, that a customary tenant will stay on the land as long as he is of good behaviour. He could, however, be evicted from the land if he commits an act inconsistent with his grant, such as denying the overlords title or refusing to pay tribute. He could, of course, on his own accord, leave the land.

Originally, it was easy to evict the tenant once he committed an act inconsistent with the grant. He was said to have forfeited his grant. Apart from his hut which was temporary in nature, and economic trees

the planting of which did not amount to much investment of labour and usually nothing in terms of money, he could not have made any improvement on the land that could cause complications.

Today, customary tenants can make improvements on the land in terms of permanent structures running into millions of Naira. They can also plant economic trees. Such improvements cannot be exhausted in many hundreds of years. The questions is that if such a tenant commits acts inconsistent with his grant, can he simply be made to forfeit his grant and leaved behind structures he might have labored for, all his life? On the basis of the rule of law, the answer is "yes". On the basis of equity or from the point of view of equity the answer is a "no".

Judicial activity in this area started from the yes answer, whereby the courts simply apply the English doctrine of *quic quid plantatur* rule. In those days, improvements on the land were of temporary nature. Today, huge investments necessitate a change. Law follows the society and the judges started to shift their approach to this difficult area first, by expressing *obita* in that direction. In *Okpala v. Okpu*[235], the Supreme

[235] (2003) 5 NWLR pt. 812 p.183.

Court explained that customary tenants now enjoy something akin to emphyteusis, *a perpetual right in the land of another*. This means as the Court states in (Holding 3) in the same case, that customary tenancy vests in the tenant the right of perpetual tenure or tenancy and therefore peaceful enjoyment as long as he does not misbehave.[236]

This change in judicial thinking is captured in the dictum of Oputa JSC (as he then was) in *Atunrase v. Sunmolu*[237], when he stated that the principle in *Ado v. Wusu* should be exercised with caution and subjected to the repugnancy test in deserving cases as the WACA itself noted in the latter case, so that persons innocently in adverse possession and who have incurred what he termed 'pecuniary responsibilities' are not unduly dispossessed of their property.

Lastly, the answer has become a "no". But to effect this judicial volte face, an underlying doctrine – forfeiture – has to be attacked. A customary tenant who has committed acts warranting forfeiture may in deserving cases, not now be declared to have forfeited. He may now fined, so that he can continued to occupy in perpetuity. This is especially so where the tenant has expended huge amount of money in developing

[236] Misbehaviour includes denying the title of the overlord or in trying to alienate the land or by refusing to pay tribute to the overlord.
[237] (1985) 1 NWLR pt 1 p.105.

the land, e.g. by building permanent structures on the land, and where the act committed is not a direct abuse of the privilege of the tenancy given to him. Where it is, the courts are quick to grant forfeiture as was in the case of *Jinadu v. Esurombi-Aro*[238]. In that case, the court held that "the building of permanent structures such as houses, churches, mosques, palaces and schools by a customary tenant would not be **sufficient in itself** to confer on the customary title or ownership of land occupied by him as customary tenant". But in *Chief Etim v. Chief Eke*[239] customary tenants on certain lands in Akpabuyo district in Calabar province, attempted to deny the grantor's title and were held liable to eviction by the trial court, but the full court commuted this to a fine of £10, so that the customary tenants could continue in occupation, having expended much in developing the land.

3.5.1 **Tenancy Among the Tivs**

Customary tenancy among the Tivs was and is still being practiced. An elder, Iorhemba Tervashima[240] told the researcher in Katsina-Ala, that tenancies are usually for farming purposes and are usually fixed for 2 years at the first instance. This, he explained, was firstly because of the hard work involved in clearing a bush. He stated that secondly, it was

[238] (2005) 14 NWLR pt 944 p.142.
[239] Chief Etim & Ors v. Chief Eke & Ors (1941) 16 NLR 43.
[240] Inter view with Elder Tervashima in Katsina-Ala in February 2009.

not equitable to remove a tenant who has done such work after only one farming season. Payment of tributes has not been a common practice. Tenants could be removed from the land if: (1) he period fixed expires; (2) the tenant commits an act of misbehavior, such as encroaching on the grantor's land not within the portion granted under the tenancy, where the tenant challenges the title of the grantor.

Under Tiv customary land tenure practices, it has not been contemplated that the tenant can deny the grantor's title, nor use the land for different purpose. In fact, there can hardly be a different purpose in the rural areas.

Elder Kondom[241] and other respondents stated that generally in Tivland, if a tenant remains on the land long enough to plant perennial trees and or build economically significant structures on the land, he may be allowed to reap the fruits of such trees or sell the structure to the grantor. He explained that where there was no agreement on this at the inception of the tenancy, then the elders will decide based on what is fair to both parties. Finally, he explained that the children of a deceased grantor is

[241] Op cit

at liberty to ratify any subsisting tenancy or else it lapses with the death of the grantor.

3.5.2. Tenancy Among the Idomas

In Idomaland, customary tenancies are common practice. It was observed in the course of the survey that in Aionaland in Orokam District of Ogbadibo Local Government Area, a whole hamlet called Idiri, moved from another village called Igwu due to sectional clashes and settled in Aionaland as tenants some 80 years ago and are still there as tenants. In fact, those alive now are children and grand-children of the original tenants. During the interview for this research, they stated that they consider themselves as indigenes, though they are aware that they are tenants.

It was also observed that farmland tenants in Idomaland paid tributes, usually wines at the end of every farming season. They were also expected to be of good behaviour and must not derogate from the customarily accepted terms of the tenancy, i.e. not to deny the grantor's title. It was observed in that community that although, today, tenants holding cultivable farmland pay tributes, tenants for residence land never paid tributes but must respect the title of the grantor-family.

Tenancies are generally granted in Idomaland for indefinite period of time but there are also cases where tenancies are granted for agreed periods of time, for example, for one cropping season.

Tenants can plant economic trees and build on the land. When they leave, it is the general practice that they can always come back to reap the trees, such as tapping the palm tree or plucking the fruits. In case of houses, they do not usually come back to either sell or inhabit them, since in the rural areas where customary tenancy practices abound, the structures would normally not be permanent or economically significant ones. Where the houses are of permanent and valuable types, which are of more recent events, the tenants would sell them to the overlord or to some-one else with the approval of the overlord, if the tenant has to leave. Vacation of tenants who have made unexhausted improvements are rare in recent times. This is because they consider the land to be their own.

3.5.3. Tenancy Among the Alagos

Under the Alago custom, according to Addra[242], customary tenancy granted by one family to another in Alagoland is impossible. He explained that there is no family or individual lands except community land. Community members do not need tenancies to be on the land. If they choose to move from one village to another, they do not go to the next village as tenants, but as members of the community and the community leader on request, will allot unused farmlands to such members.

The community leader, Addra[243] explained further, can and do grant tenancies to people from outside the community to settle among the Alagos. Such cases are however, not rampant. Where such tenancies are granted, the tenants cannot possibly derogate from their grant by way of denial of the grantor's title or by sale. This is because there is no-one to whom they can sell the land. If the tenants leave, they may come back to reap economic trees they planted while on the land.

[242] Op cit
[243] Op cit

3.5.4 Tenancy Among the Eggons

Customary tenancies are granted by among the Eggons, usually for farming and not for building permanent structures. Chief Embugus Barde[244] stated that the tenants are usually told clearly not to plant economic trees. Tenancies are generally for indefinite periods, but short duration tenancies can also be granted. Chief Barde stated further that the Eggons do not have community nor stool land; all lands belong to the various families.

A very old man, Elder Agbashim[245] residing in Mada Station, stated that an intending tenant would usually be given conditions on which the tenancy would be operate. Such conditions might be, not to plant economic trees. He stated further that if the tenant disregarded such conditions, he stood to forfeit the improvements on the land, e.g. right to economic trees. Where no terms were stated in the beginning of the tenancy, he may forfeit such trees at the end of the tenancy but the community can wade in and provide a suitable compromise. He cited cases many years ago, where elders had to intervene in quarrels, to divide such economic trees, giving one portion to the tenant and another

[244] Interview with Chief Embugus Barde, Community leader, Kagbo, Nasarawa Eggon, on 4th February 2009.
[245] Interview with Elder Agbashim, at Mada Station on 4th February 2009.

to the grantor. Elder Agbashim's position was collaborated by Elder Akwashiki in Alushi near Akwanga[246] who stated that it was because of such quarrels that it is usually clearly spelt out at the outset that no economic trees are to be planted.

3.5.5 Tenancy Among the Madas

The Madas do not have a clear-cut public policy on customary tenancy. Each family practices what is best suited to it. Families manage their lands without recourse to any generally accepted norms. However, Dandarua and Ngeren[247] state that majority of families grant tenancies on terms of payment of tributes, usually in the form of some farm produce such as millet and guinea corn accompanied by local beer.

Issues of economic trees and permanent structures are also treated on family basis and not on community basis. No general pattern is discernable among the Madas. In the case of *Akuki Okaku v. Alkali Kuza*[248], evidence was given by villagers that the Madas granted customary tenancy to some Gwandara settlers in the 1950s at Moroa free of payment of tribute. The Gwandaras had been on the land ever since and in 2005, claimed the land as their own. The claim in the suit

[246] Interview with Elder Akwashiki, a blind old man of about 90 years on 3rd February, 2009. We are indebted to these two Eggon elders for the interviews.
[247] Op cit.
[248] (2005) Unreported Nasarawa State High Court Case No. NSD/K.14/2005 holden in Keffi.

was not for forfeiture, but for an injunction to restrain the tenants from encroaching on other nearby lands. It was held that they were tenants, and as such must adhere to the terms of their grant. The prayer for injunction was granted and the order made.

In the case of *Makasuwa Ma'aji & Ors. V. Tanko Kumatu*[249], a tenant who inherited from his father over 40 years previously was held to be entitled to continue to occupy the portion of land granted to his father and that the economic trees were his. However, his claim that his father bought the land with £6 and a cock was discountenanced by the court as he could not prove it. It was in evidence though that the defendant's father was granted occupancy by a Mada landlord and the defendant himself had succeeded his father for over 40 years during which time they had planted economic trees. The court held that long possession and the trees planted, operated to prevent forfeiture. The portion occupied by the defendant was held to have devolved on him to the exclusion of the plaintiff grantor's successor. With due respects, that is a bad decision. Customary tenants, cannot by the fact of long possession only, succeed to title over land.

[249] (1999) case No PLD/K55/94 of 29/7/1999, unreported, High Court of Plateau State holden in Keffi

3.5.6. Tenancy Among the Gwandaras

Customary tenancy is a custom recognized by the Gwandaras. In the past, according to the Odong Nyamkpa[250], the paramount chief of the Gwandaras, a customary tenant takes his grant subject to payment of tributes, usually of wine and tobacco. He stated further that nowadays, it is usually a reasonable portion of the yield of the farm, usually guinea-corn but yams and groundnuts are usually given and accepted as tributes. The Gwandaras are very touchy about tributes and any tenant who fails to pay tribute is promptly removed from the land. *A fortiori, a* tenant who fails to constantly nurture the tenancy relationship is seen with suspicion of nursing the ambition to deny the grantor's title and is promptly removed from the land.

When a tenant's grant is forfeited, the grantor will take over any locust bean tree (dorawa) planted on the land by the tenant, but the tenant is usually left to reap or even sell any other tree planted by himself such as palm trees. In Gwandara custom, the locust bean tree (dorawa) is the tree most highly valued. It produces seeds regarded as very nutritious and used as local seasoning of food.

[250] Interview with the Odong Namkpa, the paramount ruler of the Gwandaras, in Odong Nyamkpa's palace, Panda, March 2009.

3.6 PLEDGE

A pledge of land is the process whereby a person (usually a male member of family) alienates his portion of land to another person in order to provide security for a facility. This facility is usually a loan of money or money's worth. Elias defined[251] a pledge in the following words:

> Pledge or pawn is a kind of indigenous mortgage by which the owner-occupier of land, in order to secure an advance of money or money's worth, gives possession and use of land to the pledge-creditor until the debt is fully discharged.

This definition is actually a quotation of the West African Court of Appeal (WACA) in 1930 in *Adjei v. Dabanka & Anor*[252]. One outstanding feature of a pledge unlike a mortgage, is that it is pertually redeemable, even by descendants of the pledgor to the descendants of the pledgee. In *Akyerefie v. Breman-Gian*[253], it was held that a pledge by one family member redeemed by another family member is still family land. The redemption simply restored the land to its original owner.

[251] Elias T.O., Nigerian Land Law, Sweet & Maxwell, 4th Edition, London, 1971.
[252] (1930) 1 WACA 63.
[253] (1951) 13 WACA 31.

3.6.1.Pledge Among the Tivs

Respondents stated that customarily, pledge of land is practiced in Tivland. Payment of interest is not recognized. Similarly, payment of tribute is not a normal practice among the Tivs. Terms of a pledge are usually agreed between the land owner and the pledgee, but in the absence of any such agreement and economic trees are planted by the pledgee while in occupation, he still owns the trees even after the pledge has been redeemed. This means that he is allowed onto the land to reap the fruits of such trees or to sell them to another person.

3.6.2 Pledge Among the Idomas

The practice of pledge among the Idomas of Benue State is similar to that of the Tivs. No interest is paid on the pledge (i.e. part of money lent under the pledge). However, it is more usual for economic trees to be pledge than the land itself. However, the *Obiokwute* of Orokam in Ogbadibo Local Government Area (the oldest man and priest of *Alekwu*, the revered diety) stated that in Orokam and in Adoka where he resided for a long time, if land is pledged and redeemed, free -growing economic trees on the land belong to the owner of the land, unless there is a prior agreement to the contrary. He however, stated that any economic trees planted belonged to the pledgee even after redemption. This position

was confirmed by Elder Agbo Odaudu, the Oketa of Otukpo[254] and elder Udenyi Agbese[255] as representing the Agila custom.

3.6.3 Pledge Among the Alagos

Respondents stated that pledge of land is not a normal customary practice among the Alago people. This is because the land belongs to all the members of the community and a particular 'owner' is really only an occupier and has no right to pledge land. In the few instances where land is pledged, it is temporary (usually lasting for not more than a farming season) and therefore the problem of economic trees does not pose a serious challenge for solution.

3.6.4 Pledge Among the Eggons

The Eggons pledge land, but there are no standard customary rules on it. Elder Akwashiki[256] and other respondents stated that families treat the practice of pledge in different ways. This means that there are no standard customary rules on pledges. The lack of uniformity makes it difficult to draw a general picture of the community's customary practice of pledge.

[254] Discussions on various days in his residence in Otukpo, on Otukpo custom.
[255] Discussions in Otukpo on various days in Otukpo, on Agila custom. The Agilas are the people in Ado LGA, Benue State, the easternmost part of Idomaland.
[256] Op cit.

3.6.5 Pledge Among the Madas

Loko[257] states emphatically that the Madas do not pledge land, but may pledge economic trees. He states further that a form of pledge practiced in Madaland is the hiring of palm trees to professional palm wine tappers for s specific period of time. Elder Egya[258] and other respondents confirmed Loko's assertion. Although the Madas do not generally have a uniform customary land tenure system, this absence of pledge is quite remarkable among all the sub-units of the Mada people.

3.6.6 Pledge Among the Gwandaras

The Gwandaras do not pledge land. Elder Madaki Makama[259] and other respondents stated that the Gwandaras hold land in awe and believe that the land has a spirit that makes it a taboo to sell or alienate land in any way including pledging it.

[257] Op cit.
[258] Interview op cit.
[259] Interview op cit.

CHAPTER FOUR

CUSTOMARY LAND MANAGEMENT AMONG THE SIX COMMUNITES IN THE LOWER BENUE VALLEY

4.0 INTRODUCTION

In this chapter, customary land management in the area covered by this study is critically examined. Customary land management comprises the various ways that the customs of the people within the communities are put into effect. The examination is carried out against the backdrop of the literature as to what obtains in the most researched areas – the Yoruba and Ibo customs. They comprise consent to alienate, adverse possession and prescription as well as the role of the family heads in transactions in land.

4.1 ROLE OF FAMILY HEAD IN LAND MANAGEMENT

The family or Community head is usually the governor of the family or community. He exercises his authority in the over-all interest of the family, in a position akin to that of a trustee. In *Omagbemi v. Numa*[260], it was held that the family head never held the land as an individual owner. His children after his death, tried to claim ownership of the land. The court disagreed with them. The land belonged to the community and the Olu or chief was merely a trustee. However, in *Aralawon v. Aromire*[261], the court held that the family head could bind the family in routine matters but except in emergency, he must consult other senior members of each branch of the family for their assent. In that case the family head pledged family land for £105.55 from the plaintiff for the purpose of completing the rebuilding of the family "iga" and meeting the legal

[260] (1923) 5 NLR 17
[261] (1940) 15 NLR 90

expenses in connection with some family law suits. In *Kwan v. Nyieni*[262], it was held that the family head is the proper person to institute an action to protect family property.

In many communities, any transaction in land without the consultation and consent of the family head or community head is invalid. So held the court in *Ekpendu v. Erika*[263]. This is especially so in the case of alienation of land to people outside the family or community.

Equally important is the practice of accountability to other members of the family. In *Re Hotonu*[264], the court held that the family head was not liable to strictly account to other family members. In *Balogun v. Balogun*[265], the court held that expenses incidental to the position of a head of family which are incurred by the head are not accountable. It is like security vote. In that case, Graham Paul J, summed up the duties of the family head as follows:

> The head of the family is in charge and control of the family property; he collects the revenue of family property, he has to make disbursements out of the family revenue for family purposes and upkeep of the family property, funeral, marriages and baptism ceremonial expenses of members of the family

[262] (1955) GLR 67
[263] (1939) 4 FSC 79. Approved in Essan v. Farro (1947) 12 WACA 135.
[264] (1889) 1 JAS pp 87-89
[265] (1935) 2 WACA 290

> often involving the entertainment of strangers, litigations on behalf of the family, maintenance of indigent members of the family, education of children and son.

The respected judge recognized the role of the family head in the following words

> The head of a family has very considerable and onerous duties to perform, varying in degrees of course, according to the size, wealth, and importance of the family. And I have never heard it suggested that the head of a family had under native law and custom to meet the expenses of duties properly incidental to his position as head of family out of his own money as distinct from family funds. His office is gratuitous, but he is reimbursed for expenses incurred in managing the property in the same way as a trustee.

Similarly, in *Taiwo v. Dosunmu*[266], it was held that a family head was not accountable to any single family member and that in any case, a junior family member cannot maintain an action for accountability of the family head. However, in *Archibong v. Archibong*[267], the court held that the family head was accountable to the family as a whole in respect of the property which he holds in trust for the family. These may not be contradictory as it seems, especially when the income from the property is substantial, as in *Re Hotonu* supra. It is the wasteful habits of family heads who control large amount of resources that made Somolu J to observe in *Akande v. Akanbi*[268], that family heads must account to other family members. This shows

[266] (1966) NLR 94
[267] (1947) 18 NLR 117
[268] (1966) NBJ page 86.

that the court in striving to do substantial justice, can device ways to redress an obvious wrong.

Legal literature shows that the family and community heads play important roles among the Yoruba and Ibo customs. In the Yoruba custom, the family head can be a woman as was held in *Fynn v. Gardiner*[269] where the court approved the removal of a family head for misusing his fiduciary powers, in favour of a female member of the family. Similarly in *Inyang v. Ita & Ors*[270], it was held that the family as whole has a discretion as to who is to be their head, male or female, and the eldest or some-one else. In that case, the eldest member of the family had contended that he was the rightful person to be head, being a male and the eldest family member.

The role of the family head or community head in the six communities studied, i.e. Tiv, Idoma, Alago, Eggon, Mada and Gwandara in the Lower Benue Valley is now considered below.

[269] (1953) 4 WACA 260.
[270] (1929) 9 NLR 84.

Table 2 - Role of Family Head in the 6 Communities

Community	Consultation	Consent	Allocation	Partition	Accoun-tability
Tiv	Yes	No	Yes	analogous	No
Idoma	Yes	No	Yes	No	No
Alago	Yes	No	Yes	No	No
Eggon	Yes	Yes	Yes	No	No
Mada	Yes	Yes	Yes	No	Yes
Gwandara	Yes	No	Yes	No	No

Source: Field interviews 2008.

4.1.1 Role of Family Head Among the Tivs

In Tivland, the Family head is merely a representative and a witness in matters of transaction in land. The family head must be a man. He is called a *Ter* (Chief) of a *Tar* (kindred or family). The *Ter* does not play a big role. He is usually consulted, but there is no requirement that he must consent to any transaction. He is not in charge of the land and cannot on his own, apportion or allocate land to anyone without the consent of the other members of the family. This is because land was always insufficient, so to alienate it by way of sale or even to pledge it, was considered shameful. Equally shameful was for anyone to apply for tenancy. In certain

circumstances however, land might be pledged and the *Ter* and other members of the kindred were called to witness the transaction.

In recent times, in land management, whether it is alienation by way of sale, pledge or tenancy, he gives consent to transactions to validate them. This involves in signing sale agreements. It must be noted that alienation by way of sale is not a customary practice until recently and is mostly restricted to the urban and sub-urban areas.

4.1.2 Role of Family Head Among the Idomas

In Idomaland, land is owned by the family and no permanent alienation is valid without the consent of the family head and all the family members. But the family head cannot for the reason only that he is a family head, frustrate a family member's alienation of land; he can only do that as a family member.

Elder Egwu Ameh[271] and Elder Agbese[272] stated that as elders, they consider themselves as the custodians of land. They therefore hold family land in trust for the family. They allocate same in consultation with other members of the family. But as for fruit trees, they share

[271] Interviewed in Orokam, on Orokam culture, on 9th September 2008.
[272] Interviewed in Otukpo, on Agila custom on 8th September 2008.

out the proceeds without question from anyone. In other words, they do not account to other members of the family.

There are two Heads – one is the oldest member of the immediate family; the other is the oldest member of the kindred. All transactions are held in the house of the kindred head, as a matter of respect, and for authenticity in case of future disagreement, and not strictly for legal reasons of legality or otherwise. This means that transactions are not void or voidable for the reason only that the Kindred Head was not consulted. During the transaction, all adult males in the village, whether invited or not, have the right to be present and take part. They share in the “commission” to be paid by the purchaser or the drinks to be provided by the applicant-tenant. This involvement has the effect of making them witnesses.

As for management other than alienation, the oldest member of the family is the Head. He is directly in charge of the lands within his family. He takes tributes from tenants and fruits from family economic trees are shared in his house. When tenants bring drinks as tributes, he normally calls other family members, but if he refuses to call them, he is not sanctioned.

The role of the village chief is not paramount during land transactions beyond being a witness.

In Idomaland, a woman cannot be a family head.

4.1.3 The Role of Family Head Among the Alagos

The Alagos live in close collectivist community. They hold the land communally. All land in Alagoland belongs to the community and held in trust by the chief. In land management, the role of the family head, who is usually a man, stops at identifying a family member for the purpose of allocation of land for that member's use. His other minor role is that of settling quarrels about boundaries of land granted to particular members by the Community Head. Alienation by way of sale or even customary tenancy was not originally a recognized practice in Alagoland. This is because there are no individually owned or family land, and so, no individual can alienate land. All land belong to the Alago as a whole, administered by the chief such as the Andoma or the Osheshi. The issue of whether women can be family head in this community is not a strong one as far as customary land management is concerned.

Elder Addra[273] stated that today, those occupying land in the urban areas such as Doma, do sell their land. He said that this is wrong customarily, but that in the interest of development, the Andoma has been condoning it.

4.1.4. Role of Family Head Among the Eggons

The family head must be consulted and his consent obtained in all cases before any transaction in land can be legally binding in Eggon culture. He also manages land on behalf of the family and ensures that allocation and apportionment is done judiciously. In Eggonland, the family head must be a male and never a female.

The role of the family head, who must be a man in Eggonland, is very crucial to any land transaction. Without his consent, any alienation, especially permanent alienation such as a sale, is void except where rarely the land is partitioned. Sale of land was rare among the Eggons. Even today, sale of land is restricted to the urban and sub-urban areas. However, Chief Ezhim Akwashiki[274] who lives in a sub-urban Alushi, stated that if he were to sell his land, he would seek no-one's permission to do so, except perhaps

[273] Op cit

[274] Chief Akwashiki is an octagerian blind retired health superintendent. He granted a very illuminating interview at Alushi near Akwanga with the assistance of his son, Barr.r Ben Akwashiki, who helped with interpretation where the old man lacked words in English to explain his points.

his children who he considers to have the right to inherit him. As for customary tenants and the associated issue of tributes, there is no clear finding. This is because customary tenancy is not a significant feature of land tenure in Eggonland.

4.1.5 Role of Family Head Among the Madas

The position of the family head in Madaland is a strong one from the point of view of land transactions. The culture required that the family head must be a man. Dandaura and Ngharen[275] state that originally land was held communally with the family head in a fiduciary capacity. However, the family head is still recognized as the "trustee".

The family head is therefore required to give consent before any alienation can be valid. He is also the rightful authority to allocate and apportion land to other members of the family. The authors stated that[276]:

> In the distant past, the Mada held land communally, but with increase in the population and inter-village feuds, land of a necessity became individually owned. This is demonstrated in the fact that land was there for whoever wanted to use it irrespective of village and family differences. However, the

[275] Dandaura E. S., and Ngharen, A. Z., Mada People and Culture, Victory Family Books Ltd., Abuja, 1997, Page 17

[276] ibid.

> eldest male member of the family had a loose control over all family plots of land even though any member of the family could use it.

Loko,[277] states that this was the basis of the decision in *Gwaska v. Alhaji Sadiq*[278] where the Court disagreed with the Appellant that he could own land in Namu, a Mada community. The appellant who was not a native of Namu, contended that the piece of marsh-land in dispute belonged to him. It was in evidence that he did not belong to any family in the community. Neither could he prove a sale to him because no family there had ever sold land. In other words, he was a stranger, probably an adverse possessor.

With respects, even in modern days, family heads are consulted in Madaland when land is to be alienated. In Akwanga, the centre of Madaland, records of land cases at the Upper Area Court and the Area Court Grade I show that family heads are usually called to give evidence that they approved land sales.

As for accountability for tributes from customary tenants, there was no finding that the Mada family head must account to other members of the family. For that matter, customary tenancy is not a significant feature in Mada land tenure practices.

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[277] Loko, H., Mada Native Law and Custom, Ministry of Justice, Jos, 1992.p.43.
[278] Gwaska v. Alhaji Sadiq (1982-1983) PCCA 88.

4.1.6 The Role of Family Head Among the Gwandaras

The Gwandaras have a uniform culture regarding land tenure, under which land is not to be sold. The requirement for consultation, consent and approval of family or community head to alienate land is therefore not an issue in traditional Gwandara setting. However, the family head, who must be a man, is consulted in all transactions regarding alienation by way of tenancy or pledge. His consent is not a *sine qua non* however.

However, in Gitata, Panda, Gurku, and other sub-urban areas, sale of land is now possible. Elder Makama[279] and other Gwandara elders interviewed however, stated that the involvement of the family or community head in land transactions was for the purpose of legitimatizing the transaction rather than seeking consent *per se*. When the family head or the community head is involved, he becomes a witness for the transaction, and not more.

In *Rabo Turaki vs. Madaki Makama*[280]*,* the court gave effect to the evidence of the elders that in modern times, land still belongs to families but that each member of the family can alienate his portion.

[279] Interview with Madaki Makama in his house in Zango, near Gitata in March 2009.
[280] Rabo Turaki vs. Madaki Makama, unreported Case No. UCK/CV.159/2007, Upper Area Court, Keffi.

It can be inferred from this that the court believe that portions these days rank as partitioned land. With due respects, this is bad law.

Tributes (of guinea corn and local beer) are consumed or shared in the family head's house as mark of respect to him. He is, however, accountable to the other members of the family.

4.2 ALLOCATION AND PARTITION

Allocation is the reservation of a portion of land to a family member for his use. He does not own the portion allocated and has no radical title to it, though the portion cannot be taken away from him during good behavior. His sons can inherit his portion on the same pedestal on which he held his portion. On the other hand, once a land is partitioned, the family member is the owner of his partition.

Partitioning of land is usually the result of quarrels among the family members. Also if a member is desirous of permanently alienating his portion, the best option is to partition the family land. These were the reasons advanced obita in *Oshodi v. Balogun*[281]. The partitioned pieces are no longer family land belonging to the original family but are family land subsequently among his own children. When a family

[281] (1936) 4 WACA 1.

head refuses to account for huge income from family property which he controls, one option open to the other family members is to seek court order to partition the land as was held in *Lopez v. Lopez*[282].

Table 3 – Methods of Land Acquisition in the 6 Communities

Community	Long Usage	Adverse Possession	Prescription
Tiv	No	No	No
Idoma	Yes	No	No
Alago	No	No	No
Eggon	No	No	No
Mada	No	No	No
Gwandara	No	No	No

Source: Field interviews 2008.

4.2.1 Allocation and Partition Among the Tivs

All the elders interviewed stated that the Tivs allocate available land among the wives for cultivation purpose only. The allocation of land follow the principle of stirps – i.e. along the mother's line. Elder Kondom[283] stated that the wives do most of the farm work and where the man goes to one of his farms, he goes there to help the wife. It is the primary duty of the each wife to tend the land together with her children. Land is therefore allocated to the wives and their

[282] (1924) 5 NLR 50.
[283] Op cit

respective children. As the children grow, they branch out, not taking shares from their mother, but go out to conquer their own land. It is perhaps the youngest male child that would remain to inherit the mother in taking care of the family land. He farms the land for himself, but the land itself belong to the whole family.

Customarily, land is never partitioned in Tivland under customary tenure. However, Elder Kondom states that the situation is changing due to urbanization. Thus, according to him, land is now partitioned in Gboko, Katsina-Ala and in Makurdi areas among children of the same father. There are no more land to expand into. The land available through mothers is now divided up among the children for modern development.

4.2.2 Allocation and Partition Among the Idomas

In Idomaland, land is allocated to male members of the family on need as they attain adulthood. Allocation is done even when the head of the family or community is still alive, and it covers both land for residential as well as for farming purposes. No-one can be denied a portion because it is a right of every male member to have a portion to farm on and to build his house on. Females are rarely allocated a portion because it is not a right to them.

Under native law and custom, land is never partitioned for any reason. If there is a quarrel among descendants of a deceased land-owner which may lead to partition, it is usually resolved by the village elders and portions can be defined but this does not amount to partitioning.

If any member's portion is to be alienated by himself, he must call other members of the family to agree to the alienation, otherwise, the purported alienation is voided and any money paid is refunded. In any case, alienation must be done publicly because the elders must be present for it to be valid.

4.2.3. Allocation and Partition Among the Alagos

Every member of the community is entitled to a portion of land in Alagoland. The procedure is that a young adult male applies to the chief for a portion as he comes of age of marriage. He would normally inherit his father, but if the father is alive or the children are many, a new allocation becomes necessary. This is because land belongs to the whole community and the chief is merely a custodian (analogous to a public trustee).

Chief Addra[284] stated that a portion of land allocated to a community member can be taken away from him if he misbehaves. Whether just one misbehavior is enough to result in this harsh punishment depends on circumstances. Perhaps, the Alagos are the only community under this study that can remove a community member from his portion due to bad behaviour.

Land is never partitioned among the Alago people because, doing so would confer absolute ownership on the occupant of a partitioned land. This means that individual members of the community who sell their portions in the urban areas are doing so in contravention of custom.

4.2.4 Allocation and Partition Among the Eggons

Parcels of land are usually allocated to members of a family to farm on and also to build dwelling houses on. Elder Akwashiki[285] stated that it is a right of all members of the family to be allocated land. Other respondents agreed with this statement. They stated further that land being sold in the sub-urban areas were really family land and not partitioned land, because land is never partitioned under Eggon customary land law.

[284] Op cit
[285] Op cit

4.2.5 Allocation and Partition Among the Madas

The Madas hold land on kindred basis. Parcels of land are usually allocated to each kindred who in turn allocates to families. The families in turn allocate land to their members to farm on, and to build dwelling houses on. It is a right of all members of the family to be allocated a sufficient parcel of land. The family land was originally allocated from the kindred land. The family can deal with land allocated to it as it pleases, but partitioning among the family members is not one of the options open to it.

As in the case of Eggons, land is never partitioned under customary land tenure practice of the Madas. Alienation has therefore to be on family basis. In *Evelyn Gigya v. Monday Gigya*[286], the plaintiff contented that it was her sister that provided the money with which their late father bought the plot in dispute, and therefore the plot and the houses thereon belonged to their stirp (coming from the same mother). The court held that as long as the sale agreement showed that their father was the purchaser, the plot and the houses on it was a family property, jointly owned by all the brothers.

[286] (2008). Unreported case No. NAC/AKW.CV78/08 , Grade I Area Court, Akwanga.

4.2.6 Allocation and Partition Among the Gwandaras

Land holding among the Gwandaras is not strictly based on allocation. A family member simply settles on an expanse of land and that becomes his land. The area conquered is large and any member can simply choose where it looks fertile and settles on it and from that point in time, provided he has not abandoned it, that land becomes his. This meant that land was portioned from when settlement began.

On inheritance, the head of the family head allocated land among those entitled to inherit. Due to historical background, this allocation is tantamount to partition. Gwandaras do not alienate their land under customary rules, but this is not due to joint holding. It is due to religious belief that the land has a spirit. When they began to alienate their land in the urban and sub-urban areas, they did not ask for consent of anyone. The chiefs are mere official witnesses.

4.3 LONG USAGE, ADVERSE POSSESSION AND PRESCRIPTION

Long usage and adverse possession arise when a community or a family leaves its land for a long time. What is a long time depends on the circumstance of each case, but it was observed that 7 years generally suffice as long time. The general customary position had

been that if a community or a family leave its land for a long time and a stranger come unto the land, for no matter how long a time, his adverse possession cannot ripen into that of ownership. In the present time when occupiers may erect permanent costly structures, it has become very important to determine if a "squatter" who has built permanent structures on a land he considers to be his can be removed when the "owner" comes back.

Adverse possession refers to estoppel against the owner who has left his land for so long that another has settled on it and considers it his. That other must believe honestly that the land is his due to long possession and development, i.e. acts of ownership.

A family land cannot be said to have been abandoned to the extent a stranger can claim it through long adverse possession. This unwavering position of the law was expounded in *Agyeman v. Yarmoah*[287] by Watson J in the following words:

> mere use and occupation for sometime cannot oust an original title, in other words, there is no such things in native customary law as prescriptive title.

This position of the law was reaffirmed by the Supreme Court in the case of *Alhaji Abdulwahab Odekilekun v. Mrs. Comfort Olubukola*

[287] (1913) D & F 56.

Hassan [288] in which the term prescription was used instead of adverse possession, to the same effect.

In a recent case of *Oni v. Olokun,*[289] based on similar facts, the Court of Appeal held that "there can be no ownership by prescription in customary law, and that length of usage does not ripen invalid title of trespasser to a valid ownership of title". In *Ado v. Wusu*[290]*,* a family who left their land for about 200 years were able to reclaim it, despite the improvements made by the adverse occupier-family in the meantime.

Generally, strangers who enter into a land and make developments thereon are regarded as trespassers. However, if their occupation is long and adverse to the interests of the "owner", then the customary law equivalent of adverse possession must apply as a brand of the doctrine of estoppel against the 'owner". In *Aro v. Jaja*[291], the intervention of equity began to assist adverse possessors. In that case, the Jaja of Opobo on being sent on exile, came into Andoni land and settled. He exercised acts of ownership for upwards of 50 years, rights which were clearly adverse to those of the owners.

[288] (1997) 12 SCNJ 114.
[289] (1995) 1 NWLR pt 370 p.189
[290] 4 WACA 96 and 6 WACA 24.
[291] (1961) LLR 200.

When the people of Andoni sought to take their land back, the court held that they could not do so, having been estopped by customary adverse possession. In *Akpan Awo v. Cookey-Gam*[292], the defendant had been in undisputed possession of the land in dispute with the full knowledge and acquiescence of the plaintiff for a period of 21 years, collecting rents and granting leases to people. It was held that even if the defendant had entered into possession contrary to the principle of customary law, it would be inequitable to deprive him of the land. This principle was later approved by the Privy Council in *Oshodi v. Balogun* [293] and other cases later. On the same principle, in *Annam v. Bin* [294] it was held that there is abandonment if the tenant leaves the land for a considerable time and the house he built on it had fallen into ruin.

Prescription relates only to easements and other incorporeal rights. This includes roads, light, lateral support, and view. In all the communities studied, prescription does not apply. A householder can block another from passing through his house. Houses are built some distances from each other, so that incidences of blocking views or the need for lateral supports do not arise.

[292] (1913) 2 NLR 100.
[293] (1936) 4 WACA 1.
[294] (1907) 12 WACA 177.

4.3.1 Long Usage, Adverse Possession Among the Tivs

Under the Tiv land holding culture, no matter how long a stranger uses land that does not belong to him, he cannot be the owner. This refers to customary tenants. As for strangers occupying land in adverse use, there is no historical precedence to guide behaviour. The position is as it is because, being a predominantly farming community with conquering spirit, everyone clings to his land and transactions in land is very rare. In fact, it is a mark of manhood that a male house-owner has a very large farm at all times. Thus, leaving a land for a long time during which an adverse occupier can settle, is very rare.

4.3.2 Long Usage, Adverse Possession Among the Idomas

Due to abundant availability of land, the Idoma people hardly remove adverse settlers on their land. This condoning behavior blurs the position of customary law. If a family or an individual occupies land for a long time, the family or the individual is hardly disturbed. Any person who desires to use the land can easily move elsewhere and begin cultivation of a virgin parcel of land. Elder Egwu Ameh[295] explained that this is why it is possible for strangers to settle

[295] Interview, op cit.

anywhere in Idomaland by simply applying to the village or family head for allocation. Such allocation is usually made without conditions other than the implied requirement to live in peace with the people in the community.

After staying on a piece of land for about ten years, and having probably planted economic trees, a settler may never be told to leave the land. Elder Egwu stated that this spirit of condonment may have a foundation on how the community came about the land – by first settlement on land that originally belonged to others. He gave the following examples. (a) The Aiona community in Orokam District of Ogbadibo Local Government area came from Otukpo to settle on Okpoga land and now sees the land as their own. (b) The Aioko Community in Orokam District came from Adoka in Oshimini Local Government to settle on land that originally belonged to the Igbo and Igala communities and they also now see the land as their own, having not been challenged for over 200 years. (c) Additionally, some Igala indigenes from the nearby Olamaboro Local Government Area of Kogi State have settled in Ugbokolo in Okpokwu Local Government Area of Benue State for over 100 years. They now

consider themselves the owners of the land on which they farm and build houses.

4.3.3. Long Usage, Adverse Possession Among the Alagos

Long usage and adverse possession do not strictly speaking apply in Alagoland. This researcher was told in the Andoma's Palace at Doma that the land belongs to the Community and the Andoma as the public trustee, can allocate land to anyone, either from within the Alago Community or outside it. This same principle applies in other Alago lands – from Keana and Obi to Asakyo. However, the public trustee will not ordinarily remove any *bonafide* farmer from the land, except he has become *persona non grata* by reason of bad social behaviour.

4.3.4 Long Usage, Adverse Possession Among the Eggons

Long usage and adverse possession does not apply in Eggonland. It is not possible for a stranger to come unto the land in Eggon community and settle for a time long enough without challenge for the principle to apply. It is also not possible for a customary tenant to succeed in denying the grantor's title because the elders are involved in each alienation as witnesses. Secondly, in the past and

even at present in the rural areas, no stranger would be bold enough to settle on Eggonland unchallenged for even a week in such a war-happy community.

4.3.5 Long Usage, Adverse Possession Among the Madas

The Madas do not have a tight communal custom, but generally, long usage and adverse possession is unknown. Loko[296] stated that in Madaland, land is owned on kindred basis and for strangers to penetrate a kindred and settle unchallenged for any length of time was like a suicidal attempt. Partly for this reason, the rural Mada is purely a one-tribe settlement.

4.3.6 Long Usage, Adverse Possession Among the Gwandaras

The Gwandaras consider their land as having a spirit. As for strangers, they would not be given a minute to settle on their land unless by prior permission. Palace respondents in The Odong Nyamkpa's Palace[297] stated that in the past, if a stranger was found on a Gwandara land without permission, he would be killed. In

[296][296] Op cit

[297] Interview at the Odong Nyamkpa's palace. The Odong Nyampka is the paramount rule of the Gwandaras.

modern days, such settlement without permission cannot go unnoticed because vacant land is rare now.

Mention must be made of Gede custom under which a person who leaves his land for a reasonable length of time (three years upwards may be reasonable time), stands to lose the land to another settler. Alhaji Hussaini Atukun[298] stated that the way to avoid such loss was for the land-owner to secure his ownership with robust plantation of fruit trees and physical development. The Gedes are a community who are predominantly in occupation of lands in neighbourhood to the Gwandaras and Gbagyis in Karshi, Karu and Panda Areas of northern Nasarawa State. To them, physical possession of a farmland is co-terminus with ownership.

[298] Discussion with Hussaini Atukun, chief of Gede, in his residence in Uke in May 2009.

CHAPTER FIVE

SUMMARY, FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

5.0 INTRODUCTION

In this chapter, the summary of the entire work is made together with the major findings. Recommendations based on the findings are made as well as recommendations for further research. Finally conclusions are made.

5.1 SUMMARY

This research effort was undertaken to examine the customary land law and tenure practices of the six major communities within the lower Benue Valley of Nigeria. These communities are the Tivs, the Idomas in Benue State, and the Alagos, the Eggons, the Madas, and the Gwandaras in Nasarawa State.

There had not been any known comprehensive and comparative study of the customary land practices on the communities under this study. Due to the absence of such a study, it had not been possible to academically ascertain what obtains in the region in comparison with other communities in Nigeria. Issues such as the nature of their land holding, what they regard as land was not known, i.e. whether land includes rivers, streams, hills, planted or free growing trees and minerals. Also absent was the customary land laws and management in these communities regarding allocation, and how family or community members are treated, whether on the basis of egalitarianism or not, had not been available. Also missing was the application of the concept of accessibility to land as of right or whether it is subject to labour service, contract or homage as obtained in other traditional societies such as England, was

unknown and was therefore a problem identified for solution in this study.

The main objective of this work is to identify, document and discuss the land law and practices of the six major communities in the lower Benue River valley of Nigeria.

The method of data collection was the questionnaire and interview. A total of 24 locations were visited and a total 43 questionnaires and 48 interviews were completed. Those interviewed were mostly elders and opinion leaders within the communities. These were the custodians of culture.

Meaning of Land. All jurists and academicians agree that Land includes the soil and all things attached to it. This principle was illustrated in *Francis V. Ibitoye*[299]. This forms the principle of *quic quid plantatur solo solo cedit*. Elias[300] observed that the Roman Law doctrine of *quici quid plantatur solo solo cedit* is a principle of English as well as Nigerian property law.[301] According to Nwabueze[302], the concept of land goes further to include even abstract, incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and building of another. In Nigeria, things attached to land exclude minerals by virtue of the provisions of the Minerals Act. Generally, the law is that when a temporary alienation by way of tenancy or pledge is over, whatever the temporary occupier left on the land belong to the land owner. In *Okoiko v. Esudalue*[303], it was held that in the absence of contrary intention, that once a pledge is redeemed, economic trees on the land belong to the pledgor.

The principle does not apply to planted trees in Tiv and Idoma communities but it applies in Eggon, Mada and Gwandara communities in the absence of agreements to the contrary where tenants and pledges occupy land. It is irrelevant in Alago community.

Methods of Land Acquisition. The law is that first settlement is a recognized method of land acquisition. In fact, in *Dauda v. Iba*[304], it was held that "there can be no further question of how the settler become the owner. For, the settler thus undoubtedly becomes the original owner and title to land commences fro him…." Tenancy and pledge have been acknowledged as methods of land acquisition. A long list of cases support and uphold this position of the law. As for allocation, this is the only recognized way for a family member to acquire land. It is only in the case of partition that there must be a disagreement, between the family members or a desire of a family member to permanently alienate his portion, as recognized in *Oshodi v. Balogun*[305] to warrant it.

First settlement, inheritance, temporary alienation (tenancy and pledge in particular), and allocation are recognized mode of land acquisition in Tiv, Idoma, Eggon, Mada and Gwandara communities. In Alagoland, first settlement, inheritance, allocation are recognized but alienation of any type is irrelevant to the purely communal land holding in that community.

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[299] (1963) 13 NLR 11.
[300] Elias Nigerian Land Law and Custom, p.202.
[301] It is submitted that it is a general principle that can be derogated from in appropriate instances.
[302] Nwabueze, B.O., Nigerian Land Law,Nwanife Publishers Ltd., Enugu, 1972.
[303] (1974) FSC 15.
[304] (2006) 2 NWLR pt 1018 page 321.
[305] (1936) 4 WACA 1.

In all the communities studied, partition is not a recognized method of land holding.

Customary land law in Nigeria recognizes pledge as one of the methods of land acquisition. This is, though a temporary acquisition because, as held in *Okoiko v. Esudalue*[306], a pledge is redeemable no matter how long it has been in existence.

In the area of current study, generally, economic tress planted by the pledgee remain that of the pledgee even after the pledge has been redeemed. This is particularly so in Idoma community. However, pledge is not a recognized mode of transaction in land in Alago community.

Customary land law in Nigeria recognizes tenancy. However, at all times, the tenant must not derogate from the terms of his grant. Certain terms are implied, the most important are the continuous recognition of the grantor's title and the payment of tribute. In *Okpala v. Okpu*[307], the Supreme Court held that the major incident of customary tenancy is the recognition of the rights of the overlord to the tile of the property.

In the communities studied, customary tenancy is a recognized method of land acquisition, except in Alago community where customary tenancy was originally unknown.

Role of Family Head. In Nigeria, the role of the family head is a strong one. In *Aralawon v. Aromire*[308], the court held that the family head could bind the family in routine matters but except in emergency, he must consult other senior members of each branch of the family for their assent. In *Kwan v. Nyieni*[309], it was held that the family head is the proper person to institute an action to protect family property. It was held in *Ekpendu v. Erika*[310] that any transaction in land without the consultation and consent of the family head is invalid.

[306] (1974) FSC 15.
[307] (2003) 5 NWLR pt. 812 p.183.
[308] (1940) 15 NLR 90
[309] (1955) GLR 67
[310] (1939) 4 FSC 79. Approved in Essan v. Farro (1947) 12 WACA 135.

As for accountability to other members of the family, it was held in *Re Hotonu*[311], that the family head was not liable to strictly account to other family members. In *Balogun v. Balogun*[312], the court held that expenses incidental to the position of a head of family which are incurred by the head are not accountable. However, in *Archibong v. Archibong*[313], the court held that the family head was accountable to the family as a whole. Due to the wasteful habits of family heads who control large amount of resources, it was held in in *Akande v. Akanbi*[314], that family heads must account to other family members.

As to who can be a family head, it was held in *Inyang v. Ita & Ors*[315], that the family as whole has a discretion as to who is to be their head, male or female, and the eldest or some-one else. In that case, the eldest member of the family had contended that he was the rightful person to be head, being a male and the eldest family member.

In the communities studied, the position of the family head is not a strong one. Though he must be consulted in every transaction, his refusal to assent does not nullify transactions. He is not accountable to other family members. He must be a male member of the family, always the eldest, except if the eldest member is of unsound mind.

Long Usage, Adverse Possession and Prescription.

[311] (1889) 1 JAS pp 87-89
[312] (1935) 2 WACA 290
[313] (1947) 18 NLR 117
[314] (1966) NBJ page 86.
[315] (1929) 9 NLR 84.

The position of the law had been that long usage and adverse possession was originally not a recognized method of land acquisition under customary land law. Later, this position began to change in equity. In *Agyeman v. Yarmoah*[316], the court held that mere use and occupation for sometime cannot oust an original title, in other words, there is no such things in native customary law as prescriptive title. This position of the law was reaffirmed by the Supreme Court in the case of *Alhaji Abdulwahab Odekilekun v. Mrs. Comfort Olubukola Hassan* [317]. In *Ado v. Wusu*[318], a family who left their land for about 200 years were able to reclaim it, despite the improvements made by the adverse occupier-family in the meantime. In *Oni v. Olokun,*[319] based on similar facts, the Court of Appeal held that there can be no ownership by prescription in customary law.

In *Aro v. Jaja* [320], the intervention of equity began to assist adverse possessors. In that case, the Jaja of Opobo came into Andoni land, settled and exercised acts of ownership for upwards of 50 years, rights which were clearly adverse to those of the owners. When the

[316] (1913) D & F 56.
[317] (1997) 12 SCNJ 114.
[318] 4 WACA 96 and 6 WACA 24.
[319] (1995) 1 NWLR pt 370 p.189
[320] Op cit.

people of Andoni sought to take their land back, the court held that they could not do so, having been estopped by customary adverse possession. In *Akpan Awo v. Cookey-Gam*[321], the defendant had been in undisputed possession of the land in dispute with the full knowledge and acquiescence of the plaintiff for a period of 21 years, collecting rents and granting leases to people. The plaintiff lost the action to reclaim the land. Adverse possession was approved in *Oshodi v. Balogun* [322].

In Tiv, Idoma, Alago, Eggon, Mada and Gwandara communities, adverse possession is a recognized method of customary land acquisition.

Prescription, being a method of acquiring rights to easements and other incorporeal rights, has never been recognized in Nigerian customary land law. In practice, it is not recognized in the communities in this study. This may be due to availability of land where people build and farm far from each other.

The objectives were fully achieved and the findings are put forward in the following section.

5.2 FINDINGS

The main findings from the research are summarized below.

Meaning of Land. Generally, in the communities studied, land to them means the soil, rivers, streams, mountains, hills, rocks and fish ponds. A family on whose land a stream or river passes, is the owner of that extent of the stream or river within its land, but not beyond. A community or village can own the head of a stream. If a river forms a boundary of two communities, both communities share the river, up to the middle of it. If a river passes through a community, that part in that community is its own. Cases had never risen where a community dammed a river and prevented it from flowing through another community downstream.

Forests and naturally growing trees are part of community land. The family member on whose portion of land the naturally growing trees stand is not the owner. These days of lumbering, the proceeds from

[321] (1913) 2 NLR 100.
[322] (1936) 4 WACA 1.

selling such trees to lumbering contractors go to the family or community as a whole, usually to be shared by the family or community head.

The principle of *quic quid plantatur solo solo cedit* does not apply generally in the communities. Former tenants and pledgees can come back to the land to reap economic trees planted when they were on the land.

In Alago community, all land and what is on it, belong to the people, and held in trust by the chief. Therefore, only trees actually planted by a family member belong to that family member.

First Settlement. In the lower Benue Valley, all the land were acquired originally by settlement on vacant land. However, the Mada seems to be an exception, because their origin is unclear. There is no acceptable account of where they came from.

Inheritance. All the communities studied, except Alago, recognize inheritance as a means of acquiring land. Inheritance means the succession of sons to their fathers' portions on the same terms, to wit: that they are members of the family, not to their fathers' portions as owners.

In Alagoland, the principle does not apply because all land is held purely on communal basis, and all members of the community are entitled to land automatically as an incidence of membership of the community. Although a family member can continue to occupy land allocated to his father, he is entitled to his portion even if his father had none because he did not ask for any or that he was removed from the land for misbehaviour. It is also only in Alagoland that a bonafide member of the community can be dispossessed of his portion of farm-land due to bad behavior.

Alienation. Absolute alienation by way of sale is not a feature of traditional land law and tenure practice in any of the communities studied. However, temporary alienation by way of tenancy, loan or pledge is recognized in all the six communities. The modern incidence of development has, of recent times, allows alienation by way of sale in the urban and sub-urban areas.

Permanent or absolute alienation requires the consent of all adult members of the family. A family member can grant tenancy and can pledge his portion of land without the consent of other members of

the family. In such cases, the tenant or the pledgee usually ensure that other members of the family are aware of the transation.

Allocation and Partition. In all the communities studied, the main mode of obtaining land is through allocation to all eligible adult males. Partition has not been a feature of customary practice among the communities studied.

While allocation of portions of land among children of a deceased father in Tivland is on the basis of stirps (mothers' portions), no other community operate this method. In the other 5 communities (Tiv, Idoma, Eggon, Mada and Gwandara Communities), allocation is based on the mere number of all the eligible males.

Pledge. Pledge is recognized in Tiv, Idoma and Eggon and Mada communities. The Gwandaras do not pledge their land. However, they do pledge economic trees.

When a pledgee leaves the land in Idomaland and in Tivland, he can come back to the land for the purposes of reaping economic trees he planted during the subsistence of the pledge. In the other

communities, the matter is not automatic. It will be subject to negotiations in the absence of prior agreement.

Customary Tenancy. Customary tenancy is feature of all the communities studied except among the Alagos where customary tenancy is unknown. When a tenant leaves the land in Idomaland and in Tivland, he can come back to the land for the purposes of reaping economic trees he planted during the subsistence of the tenancy. In other words, the principle of *quic quid plantatur* does not automatically apply. There is no recognized customary tenancy in Alagoland. In Eggonland, the principle of *quic quid plantatur* applies in the absence of an express agreement during the granting of the tenancy. In Gwandara and Mada communities, such issues are resolved on *ad hoc* or on case-by-case basis because there is no laid down principle on it.

The Role of Family Head in Land Management. All the communities studied recognize the influence of the family head, who must be a male member of the family. This is in sharp contrast to what obtains in Yorubaland where female children can be family

head.[323]. It also differs from the custom in Kola Tenancy of Onitsha where a woman can inherit her father[324]. The family head will be consulted when a family member grants tenancy and pledge on his portion, but his refusal to consent does not nullify the transaction.

The family head is the governor of the family. He receives tributes from tenants and shares this and the proceeds of family fruit trees with other members of the family. Where he refuses to share tributes and proceeds of reaped family fruit trees, he is not sanctioned. This means that he does not account to family members as of right.

Long Usage, Adverse Possession and Prescription. All the communities studied do not recognize long usage or adverse possession as a means of bestowing title on a stranger. However, in the nearby community of Gede in Karu Local Government Area of Nasarawa State, adverse possession and long usage bestow title on a "stranger". Similarly, prescriptions is not a feature of land law in any of the community studied.

[323] In Lewis v. Bankole (1908) 1 NLR 81, the court stated in obiter that those who could inherit might be male or female. See also Lopez v. Lopez (1924) 15 NLR 50 and Folami v. Cole (1990) 2 NMLR pt 445.
[324] Gbelekeke v. Madam Iyaji [1931] SC 4.

5.3 **CONCLUSIONS**

This study has shown that the land tenure practices of the six communities studied differ slightly from one another, but differ significantly from those recognized among the Yoruba and Ibo customs, which are the most researched and documented or written about by scholars of land law. Outstanding in this regard, is the position of the family head, who is to be consulted as a senior family member, but whose refusal to consent does not nullify an alienation. The conclusion is that these rules are in tune with African concepts of democracy.

Also significant is the position of women who do not own land and who cannot be head of family. The conclusion here is that the practice is in tune with African notion on the position of women, who must be taken care of by somebody at every stage of their lives: by parents during youth, by husbands during adult age, and by children or in absence of children, by their paternal family in old age.

The Alago community is peculiar with respect to communality of holdings, whereby all land is held by the chief in trust for the people. It is only in Alago community that a family member can be removed from his portion by the chief, due to misbehavior. It is concluded that

this is another evidence of African democracy and communality, under which all members of a family are entitled to what resources are available in the family. In this community, the African land holding and ownership principle so elegantly stated in the case of *Amodu Tijani v. Secretary for Southern Provinces*[325] is still in active practice.

Finally it is safe to conclude that most of the concepts of customary land law and tenure practices among the Yorubas and Ibos do not apply to the peoples of the Lower Benue River Basin. Concepts such as female head of family, female inheritance, and partitioning of land among family members are unknown in the communities studied. The principle of *quic quid plantatur solo solo cedit* with respect to pledgees and customary tenants who have left the land is generally not practiced and is therefore not the law within the communities studied. Similarly, long adverse possession made possible by abandonment of land does not confer title on the stranger in the communities studied. Prescription does not apply to the six communities customary land tenure practices.

[325] Amodu Tijani v. Scretary of Southern Provinces (1921) 2 NLR 24, and AC 399

5.4 RECOMMENDATIONS

The application of the principle of Quic Quid Plantatur solo solo Cedit. It is recommended that the principle should apply in Idoma community where at present, it doesn't. It is neater for the principle to apply everywhere so that former tenants and pledgees do not continue to have permanent link with the land, the owner and future tenants and pledgees. It should also prevent the situation where the land is in fact taken over by a tenant or pledge who cover the whole land with plantation or buildings.

Women Ownership of Land. Women should be given portions of land as of right. Continuing to deny them the right to own land is repugnant to equity, natural justice and good conscience. The position of the Court of Appeal in *Mojekwu v. Mojekwu*[326] should apply in the region as it is meant to apply in Iboland.

Women Head of Family. Women should be heads of family on the same basis as men. To continue to practice this against women is contrary to the provision of s.42(1) and (2) of the 1999 Constitution on discrimination based on sex and circumstances of birth.

[326] Mojekwu v. Mojekwu (1997) 7 NWLR pt 512 p. 283.

Purely Communal Land Holding. The Alago community should abandon their land holding custom. If families cannot own land, then we are back to the problem of acquisition of land that brought the natives against the foreign traders at the beginning of the century. It retards progress because no-one in such community can obtain a right of occupancy under statutory laws. This is because everyone is a tenant. The land cannot partitioned. This means that mortgages are impossible under the customary land law. It was held *Abioye v. Yakubu*[327], a tenant cannot be given a right of occupancy because he is not the "holder" of the land. Loans can therefore not be sourced from financial institutions who normally ask for property as collateral security.

Further Research. It is recommended that further research be carried out to cover the communities living adjacent, in all sides, to the people herein studied, so as to expand the knowledge of the land law and tenure practices of this agrarian population, particularly the Jukuns of Taraba State, the Biroms and other neighbouring communities in Plateau and Southern Kaduna States.

[327] (1991) 5 NWLR pt 190 p. 130.

AHMADU BELLO UNIVERSITY, ZARIA

FACULTY OF LAW

Property Law

Post-Graduate Thesis Questionnaire 2005-06

Note: This questionnaire is purely for academic purposes only and information given will be treated in strict confidence.

A. **Personal**

1. Respondent's Name:_____
2. Age_____Sex:_____
3. Title:_____
4. Tribe:_____
5. Location:_____
6. Occupation:_____
7. Religion:_____

B. **The People**

1. Origin:_____
2. Population:_____
3. Area coverage:_____
4. Language:_____
5. Predominant Religion:_____

C. **Meaning of Land**

State if land ownership includes ownership of the following

River _____

Ponds/lakes_____

Mountain_____

Forest_____

Naturally growing trees_____

Planted trees_____

D. **Land Tenure**

Types of Land in community.

Are the following available here?

1. Vacant Land?_____
2. Community Land?_____
3. Stool Land?_____
4. Family Land?_____
5. Individual Ownership?_____

E. **Uses**

Who Allocates it ?

1. Who uses vacant land?_____
   _____
2. Who uses community land?_____
   _____
3. Who uses stool land?_____ _____
4. Who uses family land?_____
   _____

F. **Land Acquisition**

How do people acquire land in this community?

1. By conquests _____
2. By discovery/first settlement_____
3. By inheritance_____
4. By apportionment_____
5. By partitioning_____
6. By Gift_____
7. By purchase_____
8. By pledge_____

9. Is a family member entitled to a portion? _____

a Can he/she be denied a portion?_____

b If yes, for what reason?_____

10. Can women own land here?_____

a If yes, in what circumstances?_____

_____

G. **Role of Community Heads in Land acquisition**

Do you consult the following in the case of transactions in land?

	Sale	Tenancy	Pledge	Allocation	Partition
Village Head					
Community head					
Family head					

H. **Tenancy**

Is customary tenancy practiced here?

1. Seasonal tenancy?_____
2. Indefinite tenancy?_____
3. Joint / Common tenancy applicable ? _____
4. Are tributes/rent applicable?_____
5. Mode of termination_____
6. Reason for termination:
   a. Alienation without consent
   b. Denial of grantor's title
   c. Failure to pay tribute
   d. Use for different purpose
   e. Agreement.

7. How do you treat unexhausted improvements (trees/houses)?

a. Quicquid plantatur…_____
b. Other _____

I. Succession/Inheritance

How are the following treated in this community?

1. Widows_____
2. Male children_____
3. Female children_____
4. Relatives_____
   (a) paternal _____
   (b) Maternal_____

J. Alienation of land

1. Do the following give consent to alienation of land in your community?
   (a) Village Head/Chief _____
   (b) Family Head _____
   (c) Family members
   _____
   (d) Principal members _____
   (e) Do you sell land in your community _____
   If yes, what type of Land is saleable?
   (i) Community Land _____
   (ii) Stool land _____

(iii) Family land _____

(iv) Individually owned land _____

2. Do you pledge land ? _____

3. If answer to (3) above is yes:
   (a) Does interest apply? _____
   (b) Does time bar redemption?_____
   (c) Can you redeem before agreed date?_____
   (d) Does quic quid plantatur apply?_____

K. **Strangers/Trespassers**

1. Do you fallow land?_____
2. If yes, for how long?_____
3. If land is not occupied for a long time:
   (a) Does abandonment apply?_____
   (b) How long is long time?_____
4. Can strangers settle among you?_____
5. If yes, on what terms?_____
   _____
   _____

6. How do you treat trespassers?_____
   _____
   _____

L. **Comment freely**

On any relevant issue _____
_____
_____
_____

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LIST OF ABBREVIATIONS

AC	Appeal Cases
ALL NLR	All Nigeria Law Report
NMLR	Nigerian Monthly Law Report
NWLR	Nigerian Weekly Law Report
WNLR	Western Nigerian Law Report
FSC	Federal Supreme Court Law Report
SC	Supreme Court Law Report
LRN	Law Report of Nigeria
SCNJ	Supreme Court of Nigeria Judgments
KB	Kings Bench Law Report
QB	Queens Bench Law Report
WLR	Weekly Law Report
LLR	Lagos Law Report
JAS	
WACA	African Court of Appeal Law Report
ENLR	west Eastern Nigerian Law Report
GLR	Ghana Law Report
PCCA	Plateau Customary Court of Appeal Law Report
D & F	
CA	Court of Appeal Judgments (Ibadan)