

A COMPARATIVE ANALYSIS OF THE BENIN CUSTOMARY LAND TENURE SYSTEM AND THE LAND USE ACT OF 1978

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Abstract: The intricate notion of land ownership and possession in the present era significantly diverges from what was typically observed within the traditional Benin Community—an intriguing variation that emanates from the beliefs and idiosyncrasies deeply ingrained within the Benin populace. This particular investigative analysis endeavors to meticulously examine and intricately compare the Benin customary land tenure system with the renowned Land Use Act of 1978—a harmonious fusion of theory and practice. By employing a supremely judicious doctrinal approach, this comprehensive and scholarly study ardently pursues to astutely ascertain whether the land use Act wholeheartedly eradicated the provisions that were profoundly entrenched within the Benin customary land tenure System—an inquiry brimming with anticipation. Astonishingly, the findings that conspicuously come to fruition vividly indicate that despite the audacious implementation of the Land Use Act, the resilient bonds and age-old traditions of the Benin community continue to exert their dominance, thereby conferring upon them their inalienable rights to the cherished and highly coveted use and dominion over land—a testament to their resolute endurance. However, it is crucial to acknowledge that the malicious grip of the Land Use Act has, in fact, mercilessly wrested away from individuals or thriving communities their erstwhile unquestionable claims of absolute ownership and instead imposed upon them a significantly humbler right of occupancy—a transformation that unequivocally signifies a seismic shift within this captivating continuum.

Keywords: Comparative, Analysis, Benin, Customary, Land Tenure, Land Use Act.

1. INTRODUCTION

Land holds significant value in traditional Nigerian society, where it is held communally. However, alongside communal ownership, family or corporate ownership also existed. The customary laws governing land tenure have historically provided farmers with a sense of stability and continuity, allowing them to cultivate the land with a feeling of security. Land not only serves as a source of wealth but is also highly esteemed as an essential element of production.

Traditional Africa, and specifically Nigeria, held a progressive approach towards the allocation of land resources. In this system, land was distributed among families and individuals, while the community or clan maintained overall ownership. The King (Oba) or the clan's leader served as the custodian of the land, assuming the role of a trustee responsible for managing and safeguarding it on behalf of the clan or the entire community.

These custodians possessed the authority to oversee and administer communal properties, but always with the best interests of the community members in mind. This inclusive approach extended to welcoming strangers and individuals facing difficulties, who were readily integrated and provided land to utilize as they saw fit. Discrimination was absent in this practice, as it adhered to cultural beliefs and attitudes that emphasized life and the value of hospitality.

As a result of Nigeria's vast geographical and cultural diversity, the land tenure system prevalent during the pre-colonial era was notably intricate. Different ethnic groups embraced diverse customary practices in this regard, resulting in a complex landscape. Interestingly, there were no official records of land transactions until the colonial period. However, the colonial government introduced the land registration law in Lagos in 1863, thereby initiating the process of formally documenting rights and interests related to land. This significant development eventually extended to other regions of the country in 1894 (Ukaejiofor, 2007).

In Nigeria, the Land Use Decree No. 6 of 1978, commonly known as the Land Use Act, was put into effect on the 29th of March, 1978. This act served as a legal mechanism employed by the Federal Government to consolidate and harmonize the various land tenures existing in the country prior to its enactment. Its primary aim was to safeguard the rights of all Nigerian citizens, allowing them to sustain themselves and their families. Furthermore, the act abolished the long-standing tradition of private land ownership in the southern region and introduced a uniform system of land tenure nationwide. Under this act, all land within each state's jurisdiction, excluding land held by the Federal Government for its agencies, was exclusively vested in the hands of the respective state governors. These governors were entrusted with the responsibility of holding the land in trust for the people they represent.

The enactment of this legislation was ultimately driven by two primary factors. Firstly, it was necessitated by the multitude of diverse customary laws concerning land ownership and the associated challenges in implementing these varying customs among different peoples. The second factor was the widespread occurrence of fraudulent land sales prevalent in Southern Nigeria. These illicit transactions often involved multiple parties purchasing the same piece of land simultaneously, leading to numerous legal disputes.

Given that land is universally recognized as the most valuable and contentious asset, forming the very foundation of all human activities, it is imperative to establish a well-organized system for its ownership, management, and regulation. This is crucial to prevent the exploitation and misuse of land rights. The present study successfully revealed the disparities between the traditional land tenure system of the Bini people and the Land Use Act of 1978, shedding light on their contrasting principles and provisions.

2. LITERATURE REVIEW

2.1 TRADITIONAL GOVERNMENT IN BENIN KINGDOM

The Oba of Benin is the spiritual and political head of Benin Kingdom. His seat is in Benin City. He lives in the palace at Kings Square, Ogbé Quarters. He confers title on his subjects.

In traditional administration, his decisions are usually unchallenged but because of the democratic nature of the monarchical administration of the Benin Kingdom, the Oba's decisions are sometimes influenced by his Privy Counselors who are also his executive council members. These include the "Eghaevbonogbe" of Iwebo, Iwegue and Ibiwe Palace Societies. He confers with them before taking any decisions.

According to Osemwowa (2000), the administration of Benin Kingdom rests on the shoulders of three powerful groups;

Firstly, the Eghaevbononore – These are people's representatives and are headed by the "Iyase" of Benin, the Oba's number one subject and traditional prime minister of Benin Kingdom.

The Second group is the "Eghaevbonogbe" – These are very senior and powerful palace chiefs chosen from Iwebo, Iweguae and Ibiwe Societies make up the Eghaevbonogbe and constitute the Executive Council. They live close to the Oba's Palace. Before taking the title of Eghaevbonogbo, one has to be formally initiated by the Oba at a special ceremony.

The Third group is the "Uzama N' Ihinron, Feudal Lords and Kingmakers". They are Oliha, who is the leader, Edohen, Ezomo, Ero, Eholo, Nire, Oloton and Edaiken, the crown prince. These are hereditary titles. There are also "Uzama" known as Uzama Nibie. The Oba consults with the "Eghaevbonogbe" before going to meet the full executive council in any council

matter. The Oba hears petitions from his subjects in his office located in the palace. The Oba hears cases from women in different offices in the palace. The messenger of the Oba is called "Ukoba". They are different from his majesty information officers called "Avbiogbe". There is also the palace jester who prays daily for the Oba and wishes him long life.

Generally, the government of Benin Kingdom is administered by the "Uzama N' Ihinron" and the "Eghaevbonore" assisted by the house of "Iwebo", "Iweguae" and "Ibiwe". The "Iko-Niwebo", "Uko-Niwegua" and "Uko N' Erie" have judicial authority in civil and criminal cases.

The leading members of the following societies also take part in the administration of the Kingdom. "the Ekawe", "Iwigwe", "Iwehen", "Ebo" and "Eweise" (the royal physician and diviners), "Ihogbe" (the worshippers and recorders of departed Obas), "Efa" (the sanctifiers of royal homes), "Igun-Eronmwon" (the royal brass-smiths), "Igbe Sanwan" (the royal carves), "Owina" (the royal bell ringing announcing war and peace), "Eben" (who inter the remains of a deceased Oba), "Isekuure" (recorder of events in the kingdom), "Isienmwonro" (the executioners), "Ikpema and Igbemaba" (drummers), "Ikepziiken and Ikpakohen" (fife player), "Isekpokin" (fan and leather box makers dating back to Ogiso Ere, the second Ogiso of Benin in the First Dynasty), "Emehe of Urubi" (royal carriers who are not allowed to see the Oba without a load on their heads), "Irhemila" (the bearers of sacrificial victims), "Iwebo" (custodians of Oba's regalia and wardrobe) "Iweguae House" (in-charge of Oba's personal households), "Ibiwe" (keepers of Oba's harems), "Erueere" section with Oshodin as the head takes charge of Oba's wives (Iloi) and "Ohensa" (priests of God).

The Oba confers existing honours on deserving citizens and can also create and confer titles. All hereditary titles are conferred on the male senior son after his father's death. There are no female traditional rulers in Benin nor are chieftaincy titles conferred on them. Only the Oba's mother bears the title of "Iyoba" and so for all the Obas mothers. The last Queen mother is "Aghahowa N' Iyoba" of blessed memory and had her palace at Uselu as Customary. Women of proven integrity are honoured with the title of "Iyeye" which is not a chieftaincy title. Also distinguished individuals that have contributed to the growth of Benin and humanity in general are honoured with a gift of a royal bead of Benin Kingdom.

The Oba rule villages and communities through "Enogie" and "Odionwere". The Enogie are appointed by the Oba and Odionwere are selected among the eldest male in the community and confirmed by the Oba. The women also have them "Odionwere" but has little say in administration in the community. Women in Benin are not given proper role in traditional institution. Descendants of slaves (Igbon) and aliens never become Oba or Odionwere in Benin.

All villages and communities in Benin Kingdom have elders of councils who meet in elder ancestral shrine called "Ogua-Odion Idunmwun" the most senior elder is called "Odionwere Evbo" while the street or quarters eldest man is called "Odionwere Idunmwun". The family head is "Oka-Egbe". Proceedings in both civil and criminal cases follows these steps.

Cases that cannot be settled by the family heads are referred to the quarter or street elders (Odion-Idunmwun). If they fail to settle them, it is referred to the whole village elder council (Odion-Evbo). If they also fail, the Odion-Evbon and the Enogie will take the case to the Oba in Council. All these processes are in the form of appeal from the Magistrate Courts to High Courts, from High Court to Appeal Court. Such matters are rape on bare ground, sexing and criminal cases. These are abominations.

The Oba's decisions in customary matters are in some cases final, for example land matters. The age group system also has a lot to play in the administration of Benin Kingdom because apart from the labour, they assist in keeping peace.

The groups in Benin are -

"Ereghae"- otherwise known as Igboma, below 30 years'

"Ighele" – above 30 years

"Odion" – from above 50 years

The administration of the Benin Kingdom therefore is like a big tree with so many complex branches. An heir apparent or any ruling Oba does not bring to the Benin Kingdom a non-indigene as his successor. The exile of Oba Ovonramwen in 1987 was a result of criminal charges brought against him, and the British themselves acknowledged the resistance put up by the Binis before and after exile.

The Benin kingdom is a government of its own, with its articulate machinery of administration by convention which cannot be influenced by outside forces. It is a complex monarchical system built on a solid foundation with perfect organization structure. There is an inbuilt separation of powers even though Oba is regarded as supreme. For example, an Oba cannot change hereditary titles. If the last successor is an infant, he is conferred with the hereditary title, and regents (Edayi) may be appointed.

2.2 BENIN CUSTOMARY LAND TENURE SYSTEM

Land matters like succession and inheritance are highly prone to litigation in the Benin Kingdom. This is equally true of other jurisdictions in other parts of Nigeria. Before the promulgation of the Land Use Decree of 1978, Benin land was vested on the Oba of Benin and this acknowledged when the Binis say “Obayantor” meaning, it is the Oba that owns the land. The same is applicable to Akure (like in most Yoruba land), where it is said that all lands belong to “Osemawe” the Oba, who holds for the benefit of all Ondo people (Olayiwola & Adeleje (2006).

However, when it is said that the Oba owns the land, it does not mean that he is in possession of all lands as to make it mandatory that before individual build a house or acquire land for farming, he has to take authority from the Oba, nor did it mean that the community forfeited all rights of possession to the Oba. What it means is that the Oba holds all Benin land in trust for all Binis. Each family has a right to family land and so are children of deceased ancestors. What the Oba did was to grant approval for any acquired land in a newly carved out area and played a supervisory role in all lands in Benin. He could give out lands to anybody in need of land for investment in any part of the Benin Kingdom. Since the Land Use Act of 1978, all land is now vested on the Governor of Edo State who now replaces the Oba as the base power or authority with a radical title. The power of the Governor today is not different from that of the Oba before the Land Use Act.

Section 1 of the Land Use Act reads;

“Subject to the provision of this Act, all land comprising the territory of each state in the federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act”.

By this Act, the Governor is now substituted for the Oba of Benin while all other functions remain intact. With this, one can say that the Land Use Act is not a new concept in Benin Kingdom. Benin customary administration is likened also to administration of a sovereign nation like Nigeria with similar inbuilt cadres of authorities. The Land Use Act is a product of Benin customary land tenure system.

The land in Benin Kingdom belongs to the people or community while the Oba holds the land in trust for them. As a trustee, he had certain rights conferred on him and so he could grant land to anybody on their behalf. Land allocation to a Bini man belongs to him and his successors forever and the interest could pass to anybody as the original owner was. However, it is the prerogative of the Oba to assign the land to any applicant if the original owner has no survivors. This is done after the Oba has satisfied himself through investigation by the Land Commissioner (Oka-Avbiogbe) that the deceased has no survivors. Usually the Chiefs in charge of any community or quarter assign land both to the Binis and non-Binis with the authority of the Oba. A Non-Bini man pays a certain amount which is not rent. Rent is a new concept in the land tenure system in Benin. A stranger granted land do not pay rent but took part in communal work, paying tribute to the “Enogie” or “odionwere” and the Oba by way of yam, meat, etc. Every year, should a stranger decide to leave for his home, he forfeits his land to the king including any improvements whether permanent or temporary. He is, however, allowed to sell it to natives.

Benin Kingdom is administered by the Oba of Benin through the Enogie, Odionwere and Family heads who are also vested with trusteeship power by the Oba over all land within their domain. Allocation of family land is solely the responsibility of the family heads. The principal members of the family must be present before the demise of any family land and the consent of each other must be had.

Land and properties belonging to the stool of the Oba of Benin are not shared. They pass over to the heir apparent. But personal properties acquired by the Oba could be shared among his surviving children. Lands belonging to slaves, criminals, witches and people of dubious character who are excommunicated from Benin Kingdom are forfeited to the community from where they were driven out. No individual members of the family can alienate family land because the land does not belong to him. “Nemo dat quod Non Habet”, that is you cannot give what you do not have.

Transfer of land under Benin native custom is done by handing over in the presence of witnesses, family and children and payment by the person being handed over to, no documents were required.

2.3 PRE-REQUISITES FOR VALID GRANTS OF LAND UNDER BENIN CUSTOMARY LAW

For a valid grant of land under Benin customary law, due proof of all compliance with the preliminary steps leading to the Oba's approval as well as the approval itself are all important. Mere production of deed of conveyance and the issuance of a certificate of occupancy without due proof of prior title of the person from whom the title is derived cannot confer title on the holder. This was the decision in *Lt. Col. Mrs. R.A.F Finnih V. J.O Imade* delivered on 24th January 1992, lead judgment Babalakin JSC.

Also, a grant by the Oba in accordance with the customary law of Benin must be proved and the site must be inspected by the Plot Allotment Committee. See *k.S Okaeya Inneh V. Madam Ekiomado Aguebor*, where it was held that the grant of the Oba of Benin in accordance with Benin customary law was not proved and the respondent who had brought the matter at the lower court failed.

It should be noted that before the Land Use Act;

- a. All land in Benin division are vested in the Oba of Benin who is thus trustee or legal owner thereof on behalf of the people of Benin who are beneficiaries in this respect thereof;
- b. In respect of Benin city itself, the Oba of Benin had by 1961 appointed Ward Allotment Committee in respect of the 12 wards into which the city had been divided shortly before this for the purpose of plot allocation;
- c. Whereas any grantee of land in Benin city before 1961 might be able to produce the approval in respect thereof reduce by the Oba of Benin into writing, such a grantee after this period must be able to produce such evidence;
- d. One of the several functions of a Ward Plot Allotment Committee is to recommend plot application to the Oba of Benin for approval;
- e. An applicant for land in Benin city as from 1961 has to direct his application in writing to the Ward Plot Allotment Committee of his choice;
- f. The Ward Plot Allotment Committee upon receipt of the application would delegate some of their members to carry out an inspection of the land acquired within the area of their ward and they in turn would report back to the committee on their inspection. The purpose of the inspection being to ascertain the plot to be granted with certainty and also to ascertain if it is free from dispute or has not been previously granted to someone;
- g. Upon being satisfied about the exact locations, the dimensions and the fact that the desired plot is "dispute free", the Ward Plot Allotment Committee would endorse the application with the above facts and forward it to the Oba of Benin as recommended;
- h. The Oba of Benin would, as a rule, accord his approval in writing to a recommended application and an applicant whose application is approved by the Oba of Benin becomes the beneficial owner of the land as approved for him;
- i. Under Benin customary law, a grant of land by the Oba of Benin becomes effective from the date the Oba appends his signature of having approved the application for land. See *Aigbe V. Edokpolor* (1997), see also *Vincent Esamegho V. Aibangbee Ikhinwin* decided by Justice Irekefe (of blessed memory) as he then was on May, 17th 1968. In that case, his lordship said;

"All land in the Benin kingdom is vested in the Oba of Benin as trustee for the beneficiaries, the Benin people. A Bini desiring land on which to build applies for it to the Oba of Benin through the Ward Plot Allotment Committee in which the land is situated. The committee carries out an inspection of the site in order to ascertain its location and in order also to be able to recommend to the Oba whether the plot desired should be granted to the applicant, it being free of dispute. Upon request of such recommendation, the Oba approves the grant of the land shown in the application to the applicant who thus becomes the beneficial owner thereof in accordance with Bini custom. The Oba signifies his approval by writing "approved" in the body of the application followed by his signature and the date. The above facts are so notorious and so regularly

canvassed by parties in every contest over Benin land that any court in Benin Division is bound to take judicial notice of them.

2.4 PLANTING OF IKHINMWIN

The planting of “Ikhinmwin” tree was a recognized system of acquiring title to land under Benin Native Law and Custom in 1924 (Osemwowa, 2000). The Ikhinmwin tree given to an indigene by the Odionwere, Oba’s representatives is held as valid title to land. See *Idudun v. Okumagba* (1976).

2.5 TRESPASS ON UNDERDEVELOPED LAND OF ABSENTEE OWNER

The Oba of Benin Kingdom is greatly disturbed by the many complaints reaching the palace against people who illegally take possession of underdeveloped land of absentee owners, that is, owners who are ordinary, not resident at Benin and even of deceased persons. Land does not disappear nor depreciate to the extent of becoming non-existent, so anyone who genuinely believes he owns a piece of land has the right to come back to it anytime he chooses and finds it there. Any person who gets to a piece of land that has been left underdeveloped for a long time, concludes that it has no owner, takes possession and proceeds to build on it or sells it outright, the situation is not tolerable if the absentee owner is alive, it is sheer wickedness to steal the land of a deceased person. The chiefs have deliberated on this situation and have decided, with the approval of the Oba that such wicked persons who unlawfully occupy or interfere with the land of absentee owners must desist from such wicked act. The customary sanction in the olden days against such wicked acts was for the community to ostracize the guilty person. But the modern government, under which people now rush to the law court, frowns at ostracism.

However, persons who engage in such wicked acts of trespassing on the land of absentee owners are warned that should such matters be reported to the palace, the palace will apply every means at its disposal to ensure that justice is done to the aggrieved person. Any person whose land has been trespassed upon in the manner described is free to come to the Oba’s palace and report.

2.6 SUCCESSION AND INHERITANCE

Under the Benin Native Law and Custom, the system of primogeniture (i.e from father to eldest son) is rigidly adhered to in deciding who succeeds his father, both to the inheritable properties and ascension to the throne. If a man has no male child, distribution of properties is made among the female children according to their ages. If there are no children, the male grandchild steps into the shoes of the first male son of the deceased as if he is the first son of the deceased. He has to perform all the rights as the son would have done. If a king passes away childless, his surviving male brother may succeed to the throne. If a king has a male child in diaspora, wherever he may be, he has to be brought home to ascend the throne.

2.7 INHERITANCE – “UGHU”

Inheritance is also based on primogeniture. When a man dies, his surviving eldest child performs the traditional ceremonies of first and second burials including “OTON” and “IKPOWIA” ceremonies. Thereafter, the family get together to share the deceased properties to the exclusion of the wives who are not allowed to share in her late husband properties. However, on the death of a wife, the husband may inherit the wife’s properties or give them to the brothers and sisters of the wife. The latter is the usual practice. Inheritance in Benin is the most controversial yet; the customary law has put in place procedure for the distribution of a deceased property.

Among the Binis, the place of an eldest male child is very paramount. Hence, women and those from other tribes married to a Bini man, the desire to have a male child first is very strong. The struggle between wives of a Bini man to have the eldest son of the house attests to this. In the past, a Bini man has only one house and a harem, so when he dies, disputes as to the ownership of that “one” house does not arise. Recently, because many houses are built, disputes are now arising. However, a child born outside wedlock which was not properly solemnized and with no evidence from members of the deceased family attesting to the marriage, may have problem being accepted as a senior male child if he is not the only child of the deceased. Such a child could be one from a girlfriend before or after marriage or from a concubine. While the child remains a legitimate child of the man, he may be denied the right of a senior son. A child born out of adultery by a woman cannot be legitimized as a child belonging to his biological parents.

The Bini man has only one ancestral house and this is known as "IGIOGBE". Igiogbe is an ancestral house where the deceased serves his ancestors "Ughure" lived and died, and exclusively and automatically becomes the property of the eldest son on completion of 1st and 2nd burial rights. The "Igiogbe" could be the one he inherited from his ancestral fathers or in modern time where he served his ancestors Ughure, lived and died. This exclusively and automatically becomes that of the eldest male son on the death of his father's subject to the performance of the full burial rights.

2.8 THE LAND USE ACT NO. 6 OF 1978

The promulgation of Land Use Act (formerly known as Decree) came into existence on the 29th of March, 1978 with the principal aim of regulating the use of land within the country. The preamble to the Land Use Act vest all land comprising the territory of each state solely in the Governor of the state, who is deemed to hold such land. In trust for the people and would henceforth be responsible for allocation of land in all rural urban areas in the state and to organization for residential agricultural, commercial and other with respect to non-urban areas are vested in the local governments. According to Famoriyo (1972), the decree envisaged the "right of occupancy" which would appear to replace all forms of previous title to land and would form the basis upon which land was to be held. These rights were of two kinds: statutory right of occupancy and customary right of occupancy (Udo, 1985). Statutory rights of occupancy were to be granted by the Governor and dated principally to urban areas in contrast, a customary rights of occupancy under the Act were to be granted by local government to any person or organization for mining, oil and gas residential and other purposes with the provision that grants for agricultural grazing purpose should not exceed 500 to 5000 hectares respectively without the consent of the state Governor (Omotola, 1985).

According to Ukaejiofor (2008), The Land Use Act promulgated in 1978, was motivated by the need to make land accessible to all Nigerians; prevent land speculation; to unify the tenure system; to remove unhealthy rivalry and litigations, streamline and simplify the management and ownership of land and make land available to governments at all level for development.

According to Razak (2011), section 21 of the Act provides that it shall be lawful of any customary right or any part therefore to be eliminated by assignment, mortgage, transfer of possession, sublease or otherwise however without the consent of the military Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable sheriffs and civil process law and in other cases without the approval of the appropriate local government.

According to Uchendu & Omotola (2002), Section 22 provides that it shall not be lawful for the holder of a statutory right of occupancy granted by the military governor to alienate his right of occupancy or any part therefore by assignment, mortgage, transfer of possession, sublease of otherwise whosoever without the consent of the military Governor first have been obtained.

According to Otubu (2015), by virtue of the provision of section 28 of the Act, the military governor has the power to revoke a right of occupancy for overriding public interest. Overriding public interest include. Requirement of the land by the government for public purposes, alienation of the land by the occupier contrary to the provision of the Act, and requirement of the land for mining purposes or pipelines or for any purpose connected therewith.

According to Razak (2011), section 29 stipulated that if a right of occupancy is revoked due to any of the reasons stated in section 28, the holder and the occupier shall be entitled to compensation for the above revocation shall be as respect:

- a. The land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked.
- b. Building installation or improvements thereon for the amount of the replacement cost of the building, installation or improvement that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determine by the appropriate officer less depreciation, together with interest of the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cool thereof as may be substantiated by documentary evidence and part of the satisfaction of the appropriate officer.
- c. Crop on land apart from any building, installation or improvement there on for an amount equal to the value as prescribed and determined by the appropriate officer.
- d. Interest charged for the period of delay in payment but charged at current bank rate. However, the Act is silent on disturbance, severance and injurious affection control and many rights of occupancy transfer.

3. DIFFERENCES BETWEEN THE LAND USE ACT AND BENIN TRADITIONAL LAND TENURE SYSTEM

a. Control and Management

Prior to the enactment of the Land Use Act in 1978, the Benin Kingdom was governed by the Oba, who held the role of both king and land manager for communal use. However, individual families were granted the right to their own family land, and the children of deceased ancestors also had entitlements. The Oba's responsibility included granting approval for acquiring land in newly developed areas and overseeing all lands in Benin.

Section 2 of the Land Use Act states that, following its implementation, all lands in urban areas would fall under the control and management of the state Governor. On the other hand, local governments would assume control of lands outside of these urban areas. This differs from the Benin customary and tenure system, where the family head would consult with other key family members before making any decisions regarding the land.

The introduction of the Land Use Act revealed the extent to which a customary landowner's authority and management rights were dependent on two primary factors: whether the land was located in urban or non-urban areas, and whether it was developed or undeveloped.

Section 32(4) stipulates that where the land is developed, the land shall be continued to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of a statutory right of occupancy issued by the Governor under this Act. Section 34 (5) prescribes that on the commencement of the Act, where it is on undeveloped land, one plot or portion of the land not exceeding half of one hectare in area shall be subject to subsection (6) of section 34, continue to be held by the person in whom the land was so vested as if the holder of the land was the owner of the statutory right of occupancy granted by the governor in respect or portion as aforesaid under this Act.

Despite the invasion of the land use Act, the Benin customary right of use and control of the land has not been totally swept away as the Land Use Act only divested any claimant of radical title and limited its claims to a right of occupancy, taking away freehold title vested in individuals or communities as established in the case of *Salami V. Oke* (1987).

b. Transfer of Land

The Benin customary land tenure system prescribes that any form of alienation without the proper consensus of the proper members of a family would be deemed void or voidable as in different instances. While the family property may be allotted to the members of the family, allottees cannot alienate or part with possession without appropriate consent as established in the case of *Alao V. Ayani* where the court held that a member of the family is not permitted to introduce a stranger into the family by the back door. For any alienation to be valid, the concurrence of the family head and the principal members must be sought and obtained as adumbrated in the case of *Ekpendu V. Erika* any alienation without the consent of the family head will be regarded as void ab initio however when a family head alienates a land without the consent of the principal members such will be deemed voidable.

However, a gift made by the family head without the concurrence of the principal members is void and also when the gift is made by principal members without the consent of the family head, such alienation will be deemed to be void ab initio. The land use Act makes clear and lucid provisions in section 21 and 22 that any form of transfer of right of occupancy or any part thereof in the form of assignment, mortgage or sublease, or transfer of possession is unlawful without first seeking and obtaining the consent of the Governor of that state. Thus, it should be noted that mere seeking of the approval will not amount to the grant of the approval.

c. Relationship

Under the Benin customary land tenure system, customary tenancy is usually granted to another person at customary law, a right of occupation of land to use the land in return for the payment of tribute, however since the invasion of the Land Use Act every customary land owner now has a limited right on land in the form of right of occupancy, the radical title now vested in the Governor as the position of the overlord (landlord) now that of a tenant subject to the administrative control of the Governor or the local government administration. The overlord's exclusive possession is no longer exclusive as it is now subject to the right of the governor or the local government administration.

d. Title

Under the Benin customary land law, the planting of “Ikhinmwin” tree was a recognized system of acquiring title to land in 1924 (Osemwowa, 2000). The Ikhinmwin tree given to an indigene by the Odionwere, oba's representative was held as valid title to land. Unlike the land use Act where all lands is vested in the Governor of the state and also all federal lands in the president as well pronounced in section I and 2 of the land Use Act. The fact the right now vests in the president and the Governor of states infers that citizens have just mere right to occupancy and not title on the land.

4. CONCLUSION

After a comprehensive and meticulous examination, it is apparent that the comparative analysis of the Benin customary land tenure system and the land Use Act unfolds intriguing insights. This elucidation unequivocally establishes that the land use Act did not abrogate or abolish the doctrines and practices inherent in the Benin customary land tenure; rather, it primarily elucidated the fundamental unwritten practices encompassing the aforementioned land tenure system. Notably, the land use Act, during its enactment, received resounding acclaim as a groundbreaking legislation poised to propel Nigeria towards unparalleled economic prosperity. By effectively eliminating absolute ownership or freehold interests on land possessed by communities, families, and individuals, it ingeniously transferred such rights to the government, which would assume a solemn responsibility of safeguarding and utilizing the land for the benefit of all Nigerians.

5. RECOMMENDATIONS

The rigid adherence to the age-old customs and traditions has distinguished the Bini people from other proponents of ancient practices across the vast continent of Africa. Despite enduring the dehumanizing shackles of colonialism during the despicable era of the African slave trade, and the subsequent invasion by the formidable British Imperial Army, the resilient Binis have steadfastly clung to their timeless laws and regulations.

Relating to the Bini custom, the rigid adherence to the custom which makes only the senior male child to inherit his deceased father's IGIOGBE offend section 42(2) of the 1999 Nigerian constitutional provisions, which state that no Nigerian shall be discriminated against due to circumstances of his or her birth. However, this archaic notion of penalizing a male child for being born a certain gender or for being a second son goes against the principles of equality and fairness. It is imperative to recognize that the proper inheritance of an IGIOGBE should not be determined by such trivial and biased factors.

Critically appraising this specific aspect of Bini Customary Law, it is important to acknowledge the contradictory nature of their lordships' decision in *Lawal Osula V. Lawal Osula* supra -- a decision that highlights the inherent inconsistency with the Nigerian constitution. It is abundantly clear that this particular facet of the native law fails to align with the progressive ideals enshrined within the country's supreme legal framework.

Another noteworthy feature of the Bini customary practices pertains to the exclusive conferment of titles solely upon indigenous people. Non-indigenous individuals, irrespective of their contributions towards the holistic development of Benin land, are systematically denied the privilege of receiving such honorary designations. This regressive tradition does not resonate well with the principles of inclusivity and recognition, and therefore seems out of touch with the realities of a modern society.

Furthermore, it is intriguing to observe that women within the Benin community are categorically ineligible to be granted Chieftaincy titles, regardless of their status or achievements. This gender-based discrimination reveals another facet of customary law that is yet to align itself with the dynamic demands of contemporary society. Denying women their rightful place in leadership positions based solely on their gender is a clear violation of the principles of gender equality and a barrier to achieving true societal progress.

It is worth noting that the ancestral spirits believed to guide and protect the people, will not bestow their blessings upon individuals who fail to appreciate and acknowledge the contributions made by those who strive relentlessly to develop the very homes left behind by their ancestors. This signifies the importance of recognizing and rewarding those who play an instrumental role in fostering growth and advancement within the community.

In accordance with Scruton L.J.'s perspective in the *Elderman lines limited V. Read* (1928) case, he emphatically stated, "In the absence of any established authority, it behooves us to establish one." Thus, it is high time we relinquish our rigid adherence to set norms and regulations in order to pave the way for the enthusiastic involvement of supporters of the Benin

community, who may assist in its overall development and take pride in acquiring esteemed Bini chieftaincy titles. From a broader standpoint, the fundamental purpose of law lies in governing the behavior and actions of individuals within a given society. By extension, a flawed legal system would undoubtedly breed unfavorable conduct amongst the majority, consequently leading to the vexation and despair of innocent individuals compelled to comply with such unjust regulations solely to be perceived as law-abiding citizens. Consequently, the collective outcome of such a submissive conformity to customary law would impede societal progress and development, thereby perpetuating the traditional marginalization of women and hindering their ability to contribute to the betterment of their communities.

In conclusion, the Bini people, through their unwavering loyalty to their ancient traditions, have managed to forge an identity that sets them apart among those who champion antiquated customs on the African continent. It is vital, however, for them to critically examine certain aspects of their customary practices, such as the discriminatory treatment towards male children and non-indigenous individuals, the exclusion of women from obtaining Chieftaincy titles, and the failure to acknowledge deserving contributors. By embracing a more inclusive and egalitarian approach, the Bini community can strive to bridge the gap between tradition and modernity, while embracing a future that is grounded in fairness, equality, and progress.

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