

Research Paper

**LAND AND POWER:
THE IMPACT OF THE LAND USE ACT IN SOUTHWEST NIGERIA**

by

Gregory Wilson Myers



**LAND
TENURE
CENTER**

An Institute for Research and Education
on Social Structure, Rural Institutions,
Resource Use and Development

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1300 University Avenue
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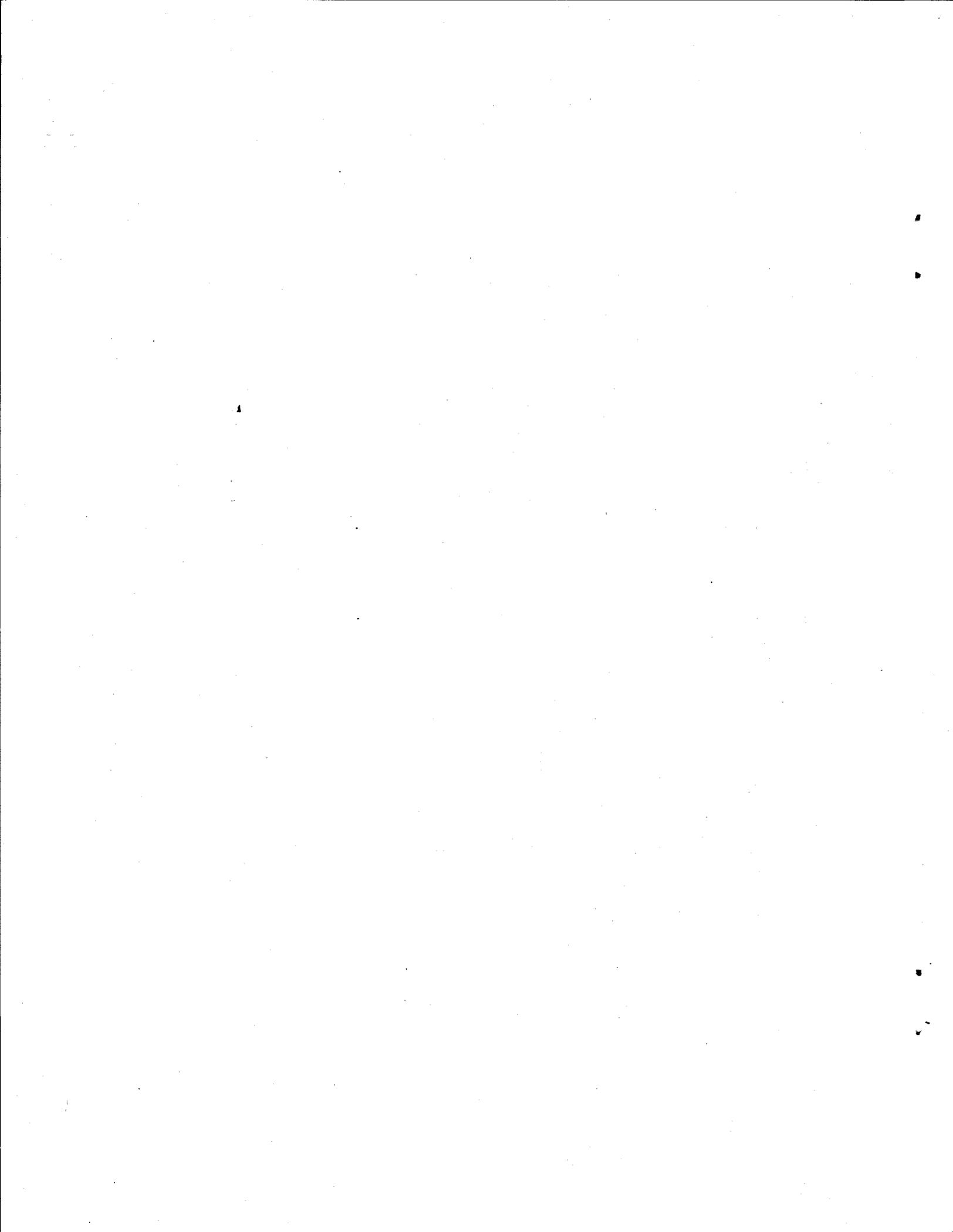
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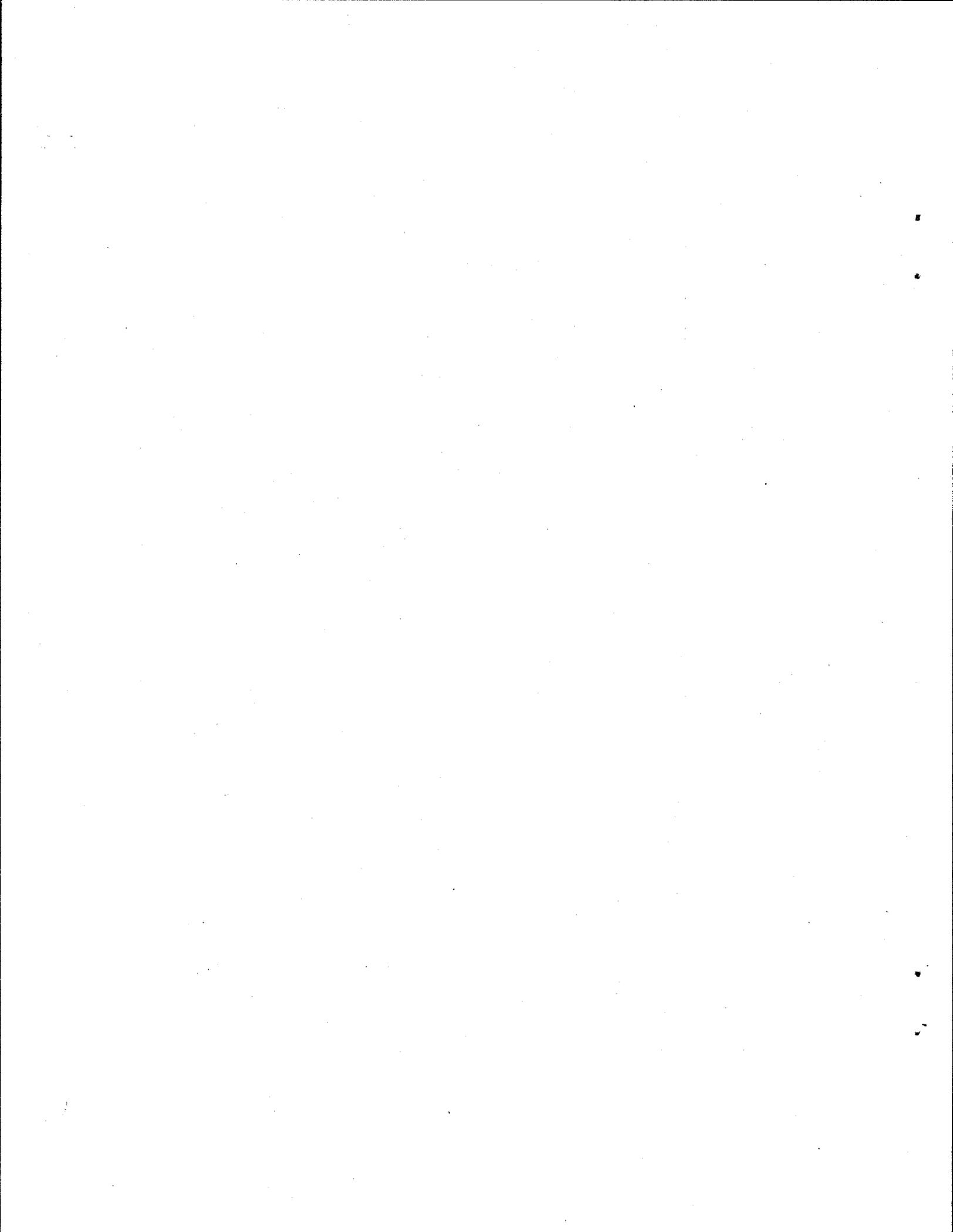


The decree had been read with the same authoritarian ritual as always; a new order reigned in the world and she could find no one who had understood it.

"What was the decree about?"

"That's what I'm trying to find out, but nobody knows anything. Of course," the widow added, "ever since the world has been the world, no decree has ever brought any good."

Gabriel Garcia Marquez, *In Evil Hour* (New York: Avon Books, 1979), p. 117.

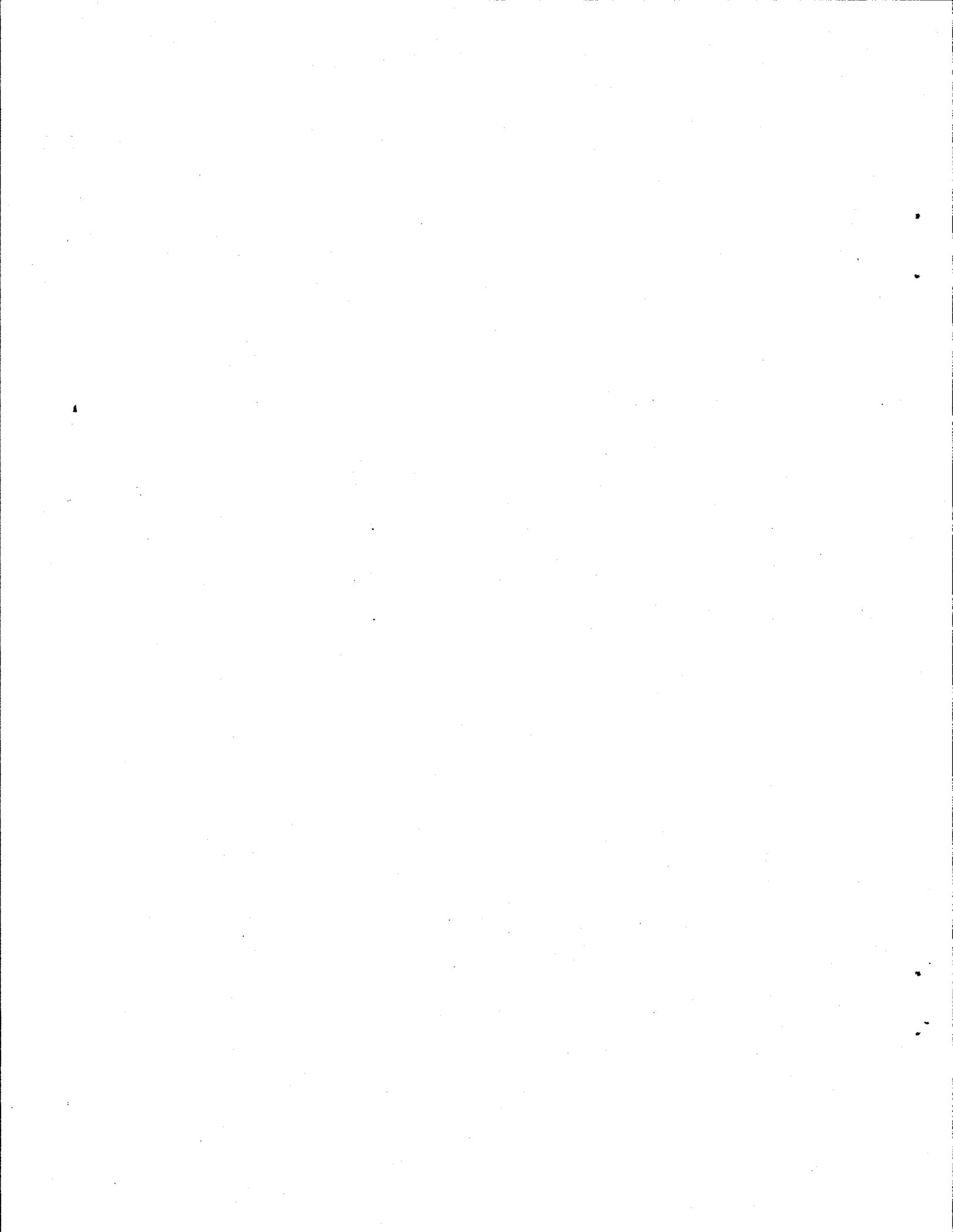


CONTENTS

	<u>Page</u>
Executive Summary	xi
Acknowledgments	xv
1. Introduction	1
Theoretical Perspective and Research Objectives	3
Research Design	5
Customary Land Tenure in Southwest Nigeria	12
2. Socioeconomic and Agricultural Conditions, Agricultural Policy and the Peasantry	15
Agricultural and Credit Policy	19
3. Land Law and Administration of the Land Use Act of 1978	21
Land Law and Administration prior to the Land Use Act	21
Land Law and Administration in Southwest Nigeria in the Colonial Period	21
The 1977 Land Use Panel	24
The Land Use Act	24
Impact of the Land Use Act	27
The Future of the Law	32
Administration of the Land Use Act	33
4. Peasant Farmers and the Land Use Act in Southwest Nigeria	41
Opportunities, Constraints, Exploitation, Resistance, and Transformation	41

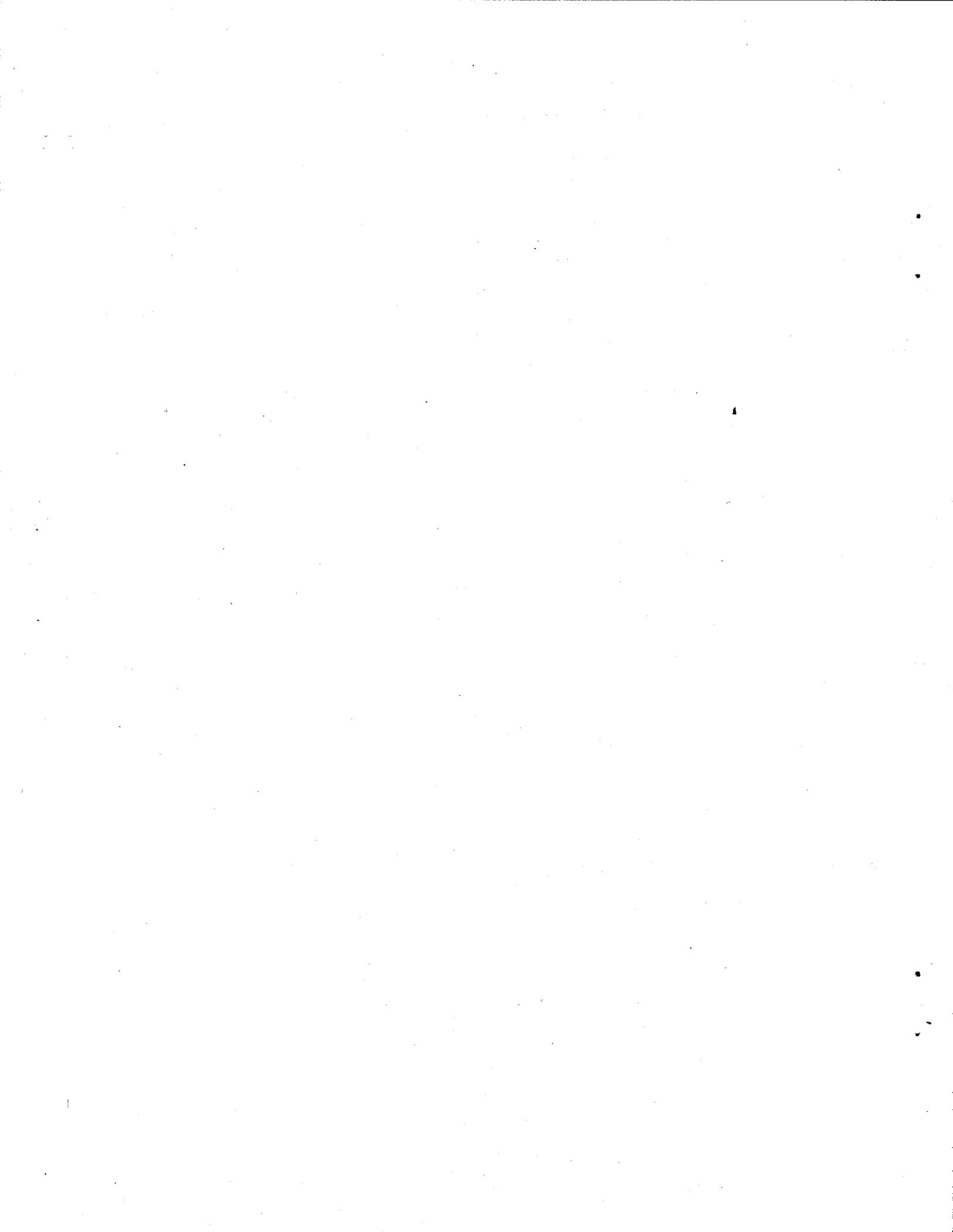
	<u>Page</u>
Peasant Farmers and the Land Use Act in Iwo Local Government Area	42
Socioeconomic Characteristics of Oluborode, Oosa, and Baase Villages	42
Farming Operations in the Three Villages	44
Tenure Arrangements in Oluborode, Oosa, and Baase Villages	45
Family and Individual Land	49
Men Peasant Farmers and the Land Use Act	50
Men Farmers, Tenancy, and the Land Use Act	51
Opportunities Created by the Land Use Act to Exploit the Peasantry	56
Peasant Farmers, Loans, and the Land Use Act	56
Women Peasant Farmers	57
Women Peasant Farmers and the Land Use Act	57
5. Commercial Farmers and the Land Use Act in Southwest Nigeria	59
Commercial Farmers and Registration: Hypotheses and Analysis	59
Commercial Farmers, the Land Use Act, and Tenure Relationships	65
Commercial Farmers, the Land Use Act, and Tenancy	67
6. Conclusion: The Appropriateness of Land Nationalization as a Policy Instrument in Nigeria	71
Summary of Major Findings	71
The Appropriateness of Land Nationalization: Conclusions and Recommendations	75
Alternative One	76
Alternative Two	79
Alternative Three	79

	<u>Page</u>
Annex: Land Use Decree 1978	83
Endnotes	111
Bibliography	123



LIST OF MAPS, TABLES, AND GRAPHS

		<u>Page</u>
Map 1.1	Nigeria 1985	7
Map 1.2	Oyo State, 1988: Local Government Areas	8
Map 1.3	Iwo Local Government Area (Southern Half): 1988	9
Map 1.3a	Iwo Local Government Area (Southern Half): 1988, Research Village Sites and Location of Farms for Three Nonregistered Commercial Farmers	10
Map 1.3b	Iwo Local Government Area (Southern Half): 1988, Location of Farms for Three Nonregistered Commercial Farmers	11
Table 3.1	Certificates of Occupancy Issued by Year, as a Percentage of Total Land Transactions in Oyo State and by Province: 1978-1988	36
Table 4.1	Men Peasant Farmers: Number of Parcels Cultivated, Parcel Size, Method of Acquisition, and Other Characteristics	47
Table 5.1	Reported Land Holdings of Registered and Nonregistered Commercial Farmers	63
Graph 3.1	Total Certificates of Occupancy Issued in Relation to Total Number of Land Transactions, Oyo State: 1984-1987	37
Graph 3.2	Certificates of Occupancy by Province, Oyo State: 1978-1988	38



EXECUTIVE SUMMARY

This study investigates the effects of the Nigerian Land Use Act of 1978 on tenure arrangements and agricultural performance. It focuses on peasant and commercial farmers in Oyo State and elsewhere in southwest Nigeria, paying particular attention to how each group has responded to the opportunities and constraints created by the law. The study also investigates the impact of these responses on the implementation and administration of the Act.

The Federal Military Government promulgated the Act to bring the many indigenous land tenure arrangements in southern Nigeria within the purview of one law and to address the alleged failings of customary tenure and particularly tenancy arrangements. Application of the law, however, has not achieved this purpose. Published literature and this study reveal that the administration of the Act in Oyo State is uneven--significant differences exist between the law's provisions and its implementation and administration. The registration process is excessively long and costly. Further, state governments have used the Act as a means to generate substantial income. Despite the provisions of the law giving local governments a role in administration of urban and rural land, in reality the process is highly centralized under the control of the state government. Notwithstanding this centralized process, very few people have registered agricultural land.

No peasant farmers in the village research sites for this study had registered farmland. Most male farmers stated that the Act did not apply to them and that registration was unnecessary. These farmers believed that their holdings were secure and that registration would provide no additional security. At the same time, however, most peasant farmers acknowledged that the state governments and the Act were potential threats to their land rights. Women peasant farmers knew less about the law but also felt that their rights to land were secure from state interference. They saw the greatest threat to their rights from their husbands. Women peasants may be the clearest losers from the Act, which may hurt them by reducing their access to land and degrading their fragile socioeconomic position.

In general the law has created tenure insecurity and hindered both agricultural investment and performance. It has led to an increase in the number of cases of land disputes and litigation. Nor has it decreased fragmentation. The Act has inhibited or warped the land markets, creating opportunities for some to buy land at prices below their market value.

Many people have responded to the opportunities and constraints created by the law. In this process, there have been some clear winners and losers, as well as instances where relations have been made more complex, commodified, and muddled. Wealthy peasant farmers have benefited somewhat, but more often peasant farmers have suffered from state and private commercial attempts to dislodge them from their land. In some instances peasants have been

successful in resisting state attempts to acquire their land, and in other cases have successfully demanded compensation greater than that stipulated by law.

Even though most peasant farmers argued that the Act did not apply to them, some have used the mystique of the Act to renegotiate tenancy arrangements. Those peasant farmers who have economic power have been more successful in their attempts to change these relationships than those without economic power. Similarly, those with economic power have been more successful in resisting attempts to change tenancy arrangements than those without economic wealth. Consequently, the Act, in conjunction with the changing economic conditions, has injected a new measure of insecurity into tenancy arrangements. Since many peasant farmers engage in these arrangements, and since these are very efficient and productive, this insecurity may negatively affect agricultural productivity in the peasant sector.

The law has provided opportunities for some elite to gain access to land, and it has allowed some to legitimize their acquisitions. "New elite," particularly civil servants, have benefited most from opportunities created by the law. Over the last few years many have used the power or threat of the Act to intimidate peasant farmers in order to dislodge them from their lands. In contrast, some members of the "old elite" have found the law unnecessary, while others perceive that it has seriously challenged their authority. This study contributes to our understanding of how new and old elites manipulate and resist law to advance their socioeconomic positions.

Commercial farmers have also exploited provisions of the law. Commercial farmers who are part of the new elite are more likely to register land than commercial farmers who are part of the old. Old elite commercial farmers have not done so because they feel confident in their control over their land and can call upon customary legal and social mechanisms to support or defend their interests against threats. New elite who have registered land did so because of real or perceived threats to their land rights. There appears to be a relationship between one's decision to register, the method of acquisition, and status within the new elite. People register land if they feel insecure in their rights even if they also believe that the land was fairly or properly acquired. New elite will not register if they feel that the land was improperly acquired or if they feel above reproach.

The law has facilitated individualization of tenure arrangements for both peasant and commercial farmers, transforming customary land tenure arrangements and contributing to the commodification and specificity of tenancy arrangements among and between commercial and peasant farmers. At the same time, however, the Act is also inhibiting changes that might otherwise have occurred in customary and commercial tenure arrangements.

Given that the Act has had so many negative consequences for tenure and agriculture, two questions remain. Is land nationalization an appropriate policy choice in the Nigerian context? And if not, what policy choices should the government make to affect the current land tenure situation?

It is clear that the Nigerian state has been unable to implement or administer its land nationalization program. Any land program in Nigeria should acknowledge that land continues to be held by peasants and regulated according to customary or traditional rules and mechanisms. It should also recognize that customary tenure institutions are resilient, flexible, and secure.

Land policy in Nigeria should follow an "adaptation" approach, where customary tenure remains the predominant system and is allowed to evolve or change at its own rate. Three alternatives to the Land Use Act might achieve some success in increasing security and productivity and improving agricultural performance without undermining the local social structure. These alternatives might be seen as successive steps in the development of land tenure law and policy in Nigeria.

In the first alternative the Land Use Act would remain in force and the state governments streamline the administrative process. In addition, each state would create an independent review panel to hear cases of problems in administration or misuse of power by the Land Officers. The state governments would develop procedures that facilitate the alienation of a Certificate of Occupancy (C of O), improving its market value and thus its collateral value. Other changes by state governments include:

1. The Department of Lands in each state would develop a registry that records the C of O transactions. This information would be public. Once approved, the term of the certificate would be for ninety-nine years and renewable.
2. The state governments would go on record supporting the value of a certificate, confirming that it is a valid legal instrument and the most important proof of ownership in a court dispute.
3. The states would require the banks operating in their jurisdiction to accept a C of O as collateral. Federal or state governments should consider offering a guarantee on loans up to a specific limit on land that is secured with a C of O.
4. The state governments would guarantee that if the land is confiscated for public purposes (through the exercise of eminent domain), the holder of a C of O will be compensated for the full market value of the land, any improvements on the land, and any related investments.
5. The government would provide incentives to encourage peasant farmers to register their land. A socioeconomic classification system could be developed that distinguishes between peasant and commercial farmers. Peasant farmers would be allowed to register free of charge.

(Or perhaps even paid to do so.) The peasant would be exempt from paying ground rent and exempt from the land tax for five years.

The second alternative goes a step further than the first. The Land Use Act would remain in force and the state governments streamline the administrative process as described above. But in addition, families, communities, and other legally recognized bodies would be encouraged to register their land. The same incentives described above would apply in this alternative. In this case all adult men and women would be allowed to register as members of a legally recognized group.

This would help to recognize and protect the many rights or claims to land within a group. It would allow these groups to acquire and compete for the same benefits that individuals can now acquire under the provisions of the Act. In time, it might help to define all use rights associated with a piece of land. It would also afford the group an increased number of legal options that are now open to individual landowners in the modern court system, perhaps reducing the propensity to resort to extralegal solutions. In addition, procedures would be established to register tenancy arrangements, advancing the development of contractual arrangements.

In the third alternative the Land Use Act would be abrogated. Land nationalization would be abandoned as the primary method of regulating land tenure, agricultural development, and resource management. State land and agricultural policy would recognize both the customary and the commercial (or freehold) land tenure systems and implement programs to support and protect their continued development. The state would recognize private individual, family, and community property, in effect granting support to the existing social reality with regard to land rights. Individuals would be allowed to record their land use rights with the state.

Recording primary and secondary use-rights may enhance their legal status and increase access to the modern court system. This would undermine the power of unscrupulous bureaucrats or land-hungry elite to acquire land from peasants at ridiculously low rates knowing that they have few means to dispute the transaction. Recording interests or use rights would limit the confusion and counterclaims over land rights that often arise when transactions occur. This approach has a much greater chance of success than does land nationalization as a vehicle for reducing fragmentation, litigation, and speculation and increasing investment and productivity. It would help make peasant production commercially viable, perhaps reducing the gulf between the capitalist and peasant subsectors in Nigeria.

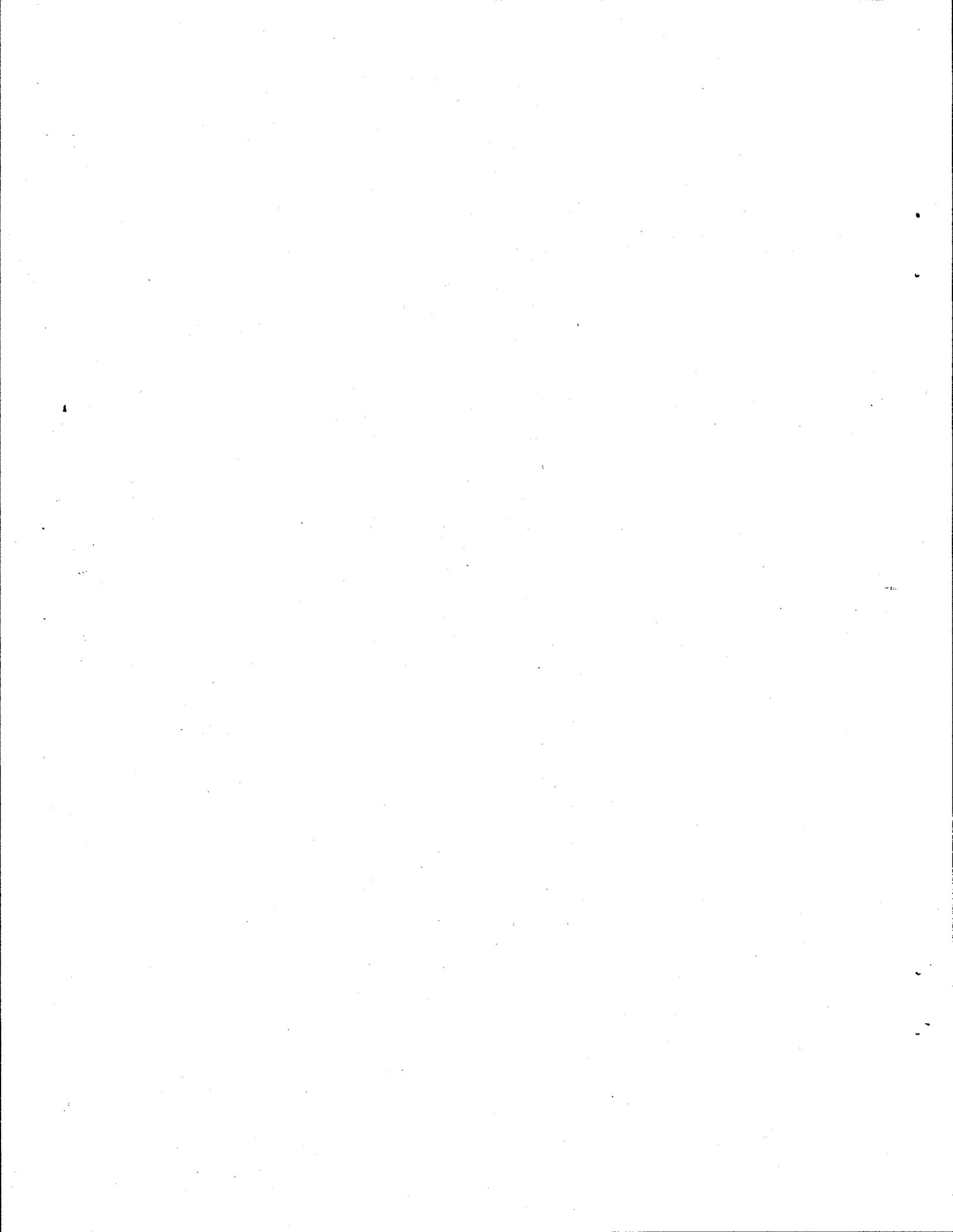
ACKNOWLEDGMENTS

Material for this study was gathered in Nigeria over a twelve-month period between 1988 and 1989. Additional material was collected during a brief four-week visit in March and April 1991.

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Gregory Wilson Myers
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1. INTRODUCTION

The last time I had been in Oluborode was in August 1981. When I returned in March 1988, I was surprised to see that the outward appearance of the village had changed little. First impressions are often deceptive, though, and I quickly discovered that the unchanged outward appearance of the village was misleading. The age gap between the resident children and the farmers had widened since my last visit. Hunger had become a more immediate concern, and more children suffered from kwashiorkor or severe malnutrition. Socioeconomic changes had taken place that significantly affected the quality of life.

Like many other villages in Oyo State, Oluborode had suffered from the deteriorating economic conditions facing the nation over the last few years, as Nigeria fell from being one of the wealthiest third world countries in 1980 to one of the poorest in 1989.¹ For most people in the village, the quality of life had worsened, although a few had been able to exploit new opportunities. The economic changes had stimulated social tensions. People were more insecure about their survival. Agriculture, land, and food assumed critical roles in people's lives. As a result, any threat to people's access to land or other productive resources was increasingly met with firm, if not bloody, resistance.

There are few subjects in Nigeria that seem to raise as much suspicion, hostility, fear, or anger as that of land rights. Very few people are without some interest in land or agriculture. Individuals who are primarily farmers, bureaucrats, civil servants, private entrepreneurs, or military elite, to name a few categories, all have intense interests in land use and control. The rural population depends on land for its survival. For the urban wealthy, land is a commercial asset and for political leaders, both civilian and military, the investment of choice. It is a vehicle through which social and political control is exercised at all levels of society, from the federal government to the household. Land is also a source of wealth for federal and state bureaucracies. Competition within and among these groups is acute, and as socioeconomic conditions continue to open opportunities for a few Nigerians while creating constraints for many others, competition over land intensifies.

Confusion and confrontation over land rights in southwest Nigeria are also stimulated by various competing and contradictory land and agricultural policies. The Land Use Act of 1978 has contributed greatly to this confusion. The law grants the state ownership of all land and the power to assign use rights. But farmers of all categories, other landowners (including those whose primary occupations are administrator or civil servant), and traditional authorities all claim to one degree or another that their land is their own, that no one can take it, and that they will die defending their right to control it.

The combination of changing economic conditions and the opportunities and constraints created by agricultural and land policies have resulted in increased conflicts and changes in land use arrangements and other social relations. For example, peasant farmers in Oyo State are attempting to protect their interests by more aggressively collecting rent, not paying rent, pursuing compensation for land acquired by the state, or preventing state acquisition. Many peasant farmers are retreating into subsistence production and are more anxious to protect their only means of livelihood. Commercial farmers have succeeded in gaining control of land and changing the terms of acquisition. In some areas land has become more commodified and land tenure has become increasingly more individualized. Not a week passes without a reference in one of the papers or journals to confrontations over land rights or control. In these disputes many farmers have lost their land and some their lives (see Beckman 1985; Myers 1990, p. 6).

This study documents the struggles of peasant farmers in southwest Nigeria. It demonstrates how these struggles are transforming agriculture, particularly tenure relations, and society. It illuminates the role of state policy in this process and particularly the appropriateness of national land legislation as a tool to stimulate agricultural and economic development. It also reveals how national land legislation has been exploited by commercial farmers and other capitalist interests.

This paper is divided into six sections. The remainder of the first section covers the theoretical position and research design of the study. Customary land tenure arrangements in southwest Nigeria are also briefly discussed. Section two focuses on the current socioeconomic and agricultural conditions and policy in Nigeria. These conditions and policy affect the way people respond to the opportunities and constraints created by a land nationalization program, and they stimulate and animate the formation and administration of land law and agricultural policy. Section three covers background information, including a brief history of land law and administration prior to the Land Use Act, the legal and administrative aspects of land law, and perceived problems with customary land tenure that eventually led to the promulgation of the Act. The provisions of the Act are briefly outlined. The findings of research studies and interviews with bureaucrats, academics, and other administrators regarding the impacts of the Act are noted. Administration of the Act in Oyo State and Iwo Local Government Area is discussed.

Section four concentrates on peasant farmers in southwest Nigeria, and particularly on the way they have responded to the opportunities and constraints the Act has created for them. Despite arguments to the contrary in the literature and by academics and bureaucrats I interviewed, the Act has had an impact on tenure arrangements and agricultural performance. Section five focuses on commercial farmers, discussing the ways they have responded to the Act. There are important differences between peasant and commercial farmers in the way they respond to the law, and there are differences within each group. Economic position and status are important influences on their responses. The major findings of the study are summarized in section six, particularly with regard to the perceived impacts of the Act as reported in published literature and by academics and bureaucrats interviewed and with regard

to the hypotheses of this study. The appropriateness of land nationalization as a policy instrument in Nigeria is discussed and alternative policy recommendations are made.

Theoretical Perspective and Research Objectives

Much of the current literature on African socioeconomy, from a variety of theoretical perspectives, depicts agricultural production as being in a state of "crisis."² Indeed, the Joint Committee of African Studies of the Social Science Research Council (SSRC) has written, "There is much agreement that the agricultural crisis is one of the major structural and policy problems facing Africa today" (SSRC 1986, p. 2). The Committee further argues that nearly all other significant problems and policy issues--such as health, disease, refugees, hunger, rural-urban migration, and debt--are "causally linked" to the agricultural crisis.³

What we know about African economy and society is marred by the inaccuracy or unavailability of data (see Watts 1989; Berry 1984). While it is obvious that socioeconomic problems are acute in many areas of Africa, it is far from clear how widespread or uniform these conditions are. Not only are there differences in socioeconomic conditions between countries, but there are often disparities in conditions within countries and distinctions at different levels, ranging from regions to local communities to the household. Thus there may be pockets of misery or wealth within larger areas of affluence or poverty. Not only are we unaware of the extent of these conditions, but more importantly we are often ignorant of the processes that have led to them.

With a few rare exceptions, it seems apparent that social scientists have so far been unable to explain the continual decline in living conditions and in rural productivity throughout the continent and unable to design policy to affect or alleviate these conditions. Part of the blame lies with unreliable or unavailable data, but most of the problem seems to lie in the realm of theory and method. The SSRC has argued that "structural," "functional," "macroeconomic," and "underdevelopment" theories have been applied with limited success and concluded that "scholars have so far failed to identify the fundamental social and historical processes which have progressively weakened rural production and distribution systems" (SSRC 1986, p. 5). SSRC has further asserted that the policies based on these theoretical and methodological approaches have thus far failed to alleviate the deepening "crisis." It is indeed likely that some of these "solutions" have significantly contributed to the current malaise.

More recently there have been calls to study and analyze social processes and rural transformation in Africa. The SSRC (1986, p. 5) has called for focusing on the dynamics of local-level processes, instead of structures, emphasizing interaction across levels (international, state, and local) and over time. The Committee suggests that by looking at local-level processes or social transformation, the nature of the crisis and its mechanisms will become clearer (see also Watts 1989; Berry 1984, 1987). The term "local-level processes" refers to the interplay among various societal institutions and individuals at the local level.

This interplay generally results in adjustments to or transformation of social institutions and individual behavior. But looking at local-level processes is not enough. These processes need to be studied in relation to macroeconomic trends and historical developments.

In the last few years the African state has increasingly become the focus of research. As Watts wrote (1984, p. 4), "The concern with bad policies, mismanagement and the problems of governability should not obfuscate the pivotal and active role of the state in African agrarian transformation." From radically different perspectives, many have argued that the state is a major factor in the agricultural crisis.⁴

Laws and administrative measures, such as land tenure laws and regulations, are two of the primary means by which the state affects agriculture and other economic sectors. Assessing the impact of these rules, including indirect and unofficial consequences, is central to developing an understanding of the current agricultural situation.

African states have historically shown a willingness to intervene radically in "customary" land law. Indeed, in the period after independence many African countries enacted legislation or administrative rules declaring, in one form or another, that all or most land is owned by the state.

There have been studies that examine African land laws and administrative rules from a legalistic perspective,⁵ as well as important contributions from customary law specialists.⁶ There have also been studies of rural farmers in relation to the effects of both local and national legal rules.⁷ Many of these studies of land law depict legal change, or more precisely the impact of land law on tenure and agriculture, in a very narrow statutory sense.

There has been very little research at the local level that connects legal initiatives with socioeconomic conditions, that focuses on processes of rural change or transformation, and that takes into consideration the range of tenure systems found in specific locales in Africa. While many studies evaluate the overt impacts of specific laws, few explore the more complex factors that determine the effectiveness of those laws.⁸

In 1978 the Federal Military Government of Nigeria promulgated Land Use Decree no. 6 (also called the Land Use Act). This law extinguished all previous forms of title, nationalized all land and vested it in the governor of each state. Two of the stated objectives of the law were to create a uniform tenure system and to eliminate any tenure arrangements that inhibited agricultural development.

This study evaluates the impact of the Act on rural tenure arrangements and agriculture in southwest Nigeria and its appropriateness as a vehicle to affect tenure practices and agricultural performance. The impact of the Act is assessed with regard to its effect on local-level processes. I examine the interplay between the state and a land nationalization law, on the one hand, and land tenure and agricultural performance, on the other. At the heart of this particular interplay is the struggle for land and power. The results are transformations

or adjustments in tenure relations, relations between the state and individuals, and relations between and among peasants and elite. The study also attempts to illustrate how local-level processes affect the development, administration, and implementation of the Act. Specifically I attempt to determine how and why farmers have responded to opportunities and constraints created by the Act and to document how farmers have tried to counteract opportunities that the Act created for other social groups and the state. I also evaluate the effectiveness of the state in shaping rural land tenure relations and agricultural performance in the context of the historical development of land tenure and law in Nigeria and of current socioeconomic and political conditions.

The study focuses on peasant farmers in three villages of Iwo Local Government Area, Oyo State, and commercial farmers in southwest Nigeria. The literature available prior to my departure for the field suggested two possible, contradictory impacts of the Act. The first was that the Act had had little or no effect on tenure relations, and that few people had responded to the opportunities created by the law. The second possible conclusion was that the Act had facilitated land grabbing and had introduced tenure insecurity in some areas. Based upon the literature, I hypothesized that the Act had presented opportunities for different social groups to acquire and secure land rights. I believed that the Act had empowered elites to grab and secure more land to the disadvantage of peasants, contributing to their marginalization. I also expected that I would find similar processes of exploitation and marginalization within the peasantry itself, that is, that the more "progressive," "aware," or "entrepreneurial" farmers would exploit elements of the Act to their advantage. In short, I believed that the law would have contributed to processes of social stratification both between social groups and within the peasantry.

Research Design

This paper is based on doctoral research conducted in Nigeria from 1988 to 1989 and on data collected during a brief visit in 1991. I conducted four case studies. Two of these studies focused on men peasant farmers in the villages, one examined women farmers in the villages, and the last focused on commercial farmers (with and without registered land). These studies were augmented with interviews of key informants at the local level and in government, and with archival material and other current research findings.

The project was divided into nine phases: (1) background consultations with staff and faculty at the University of Ibadan and the International Institute of Tropical Agriculture, Ibadan; (2) interviews of officials and academics directly responsible for land law and agricultural policy design and implementation; (3) selection of the research site; (4) level one of village case study (first case study of men peasant farmers); (5) preliminary, generalized review of land records; (6) case study of nonregistered commercial farmers; (7) detailed review and survey of land records; (8) case study of registered commercial farmers; and (9) second level of village case study (second case study of men peasant farmers and case study of women

peasant farmers). I selected three villages in Iwo Local Government Area--Oluborode, Oosa, and Baase (see maps 1.3 and 1.3a) based upon the fact that I had worked and lived in Oluborode village several years earlier. I interviewed more than fifty men and women from these villages and from this number selected several as subjects for case studies.

The core of the project was the first and second village-level case studies. At the first level I conducted in-depth background interviews of five male farmers. The objective was to determine the range of tenure practices and how these practices might be changing as a result of the Act. Relevant socioeconomic, agricultural, and historical information about the three villages was also gathered. Two additional, more detailed case studies were conducted at the second level. The first of these focused on men peasant farmers, while the second investigated women peasant farmers. The second-level studies included fourteen men (including the five from the first-level study) and six women. The selection was not randomized. An attempt was made to select farmers who ranged from "poor" to "affluent," who had access to land through a variety of tenure arrangements (for example, lease, loan, pledge), and who identified land as either family or individual. To some degree the selection was biased. Some of the subjects refused to participate in the in-depth interviews. Nevertheless, I obtained a significant amount of information from numerous discussions with many other farmers in the villages during the course of the project.

While research was under way, I decided to conduct two additional studies. I had found that despite the Land Use Act's provisions for registration of land, only a few commercial farmers and a few other "elite" had registered farmland in Oyo State. Based upon this preliminary finding, I decided to expand the scope of the study to include registered farmers. Two additional case studies were added to the project. These focused on commercial farmers who had some registered land (that is, had actively responded to the provisions of the Act) and commercial farmers who had not registered any land. I focused on a few commercial farmers to address three issues: first, why some farmers register and others do not; second, how these farmers and other members of the elite have been able to exploit the Act; and finally, what the impact of the Act has been on tenure and agricultural performance among commercial farmers.

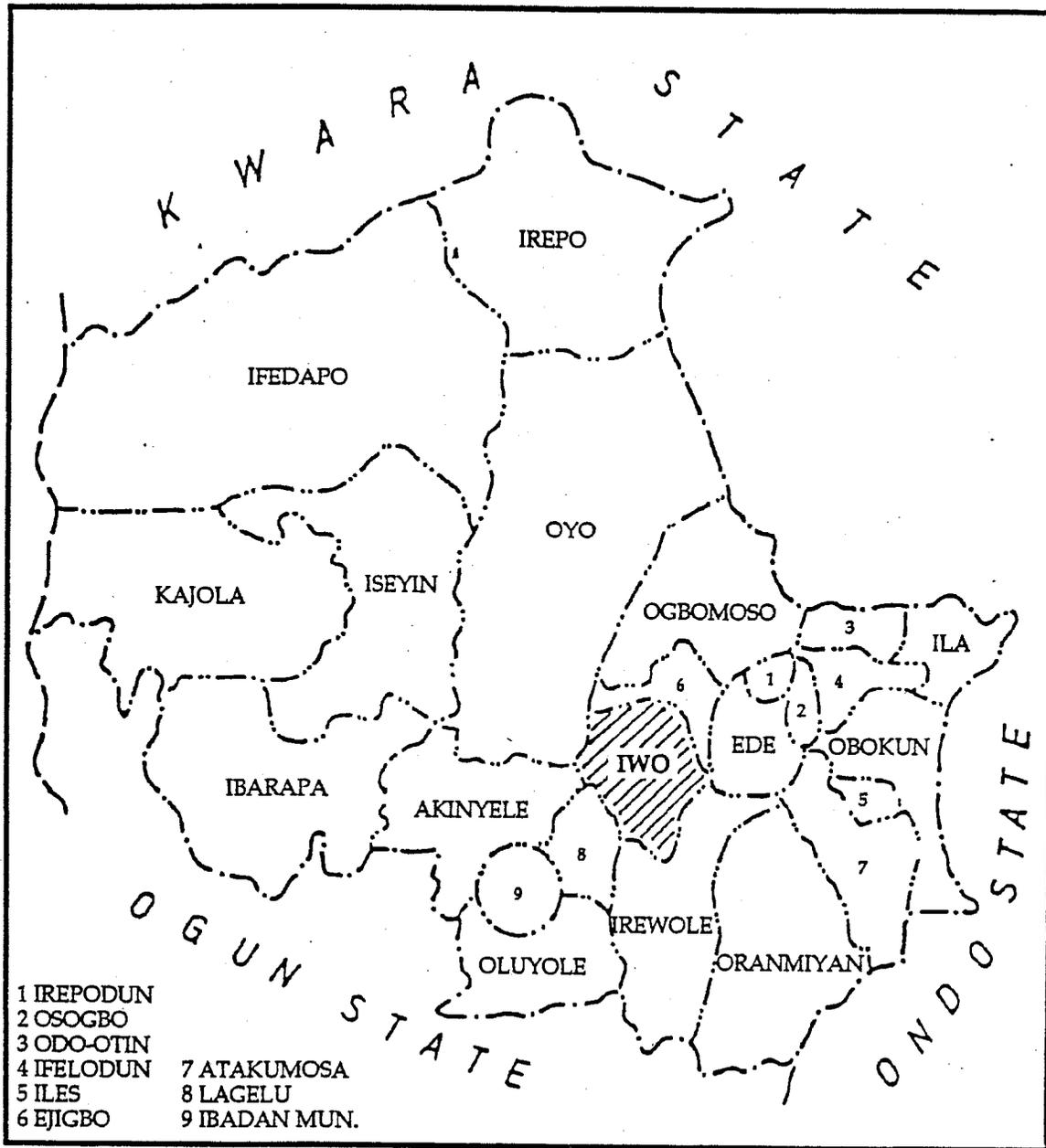
Ten commercial farmers were interviewed, four with registered land and six without. The four with registered land who were interviewed were part of a larger group of seven selected at random from the files at the Lands Office in Ibadan.⁹ The six farmers without registered land were selected from a list of names provided by the Chairman of the Iwo Local Government Area and an Iwo Town Chief.¹⁰ All of the land parcels of the six individuals who chose not to register are located in Iwo LGA (see maps 1.3, 1.3a, and 1.3b). Most of the land parcels that belong to the four individuals interviewed who did register are located in Oyo State, but are outside of Iwo LGA.

MAP 1.1 Nigeria 1985



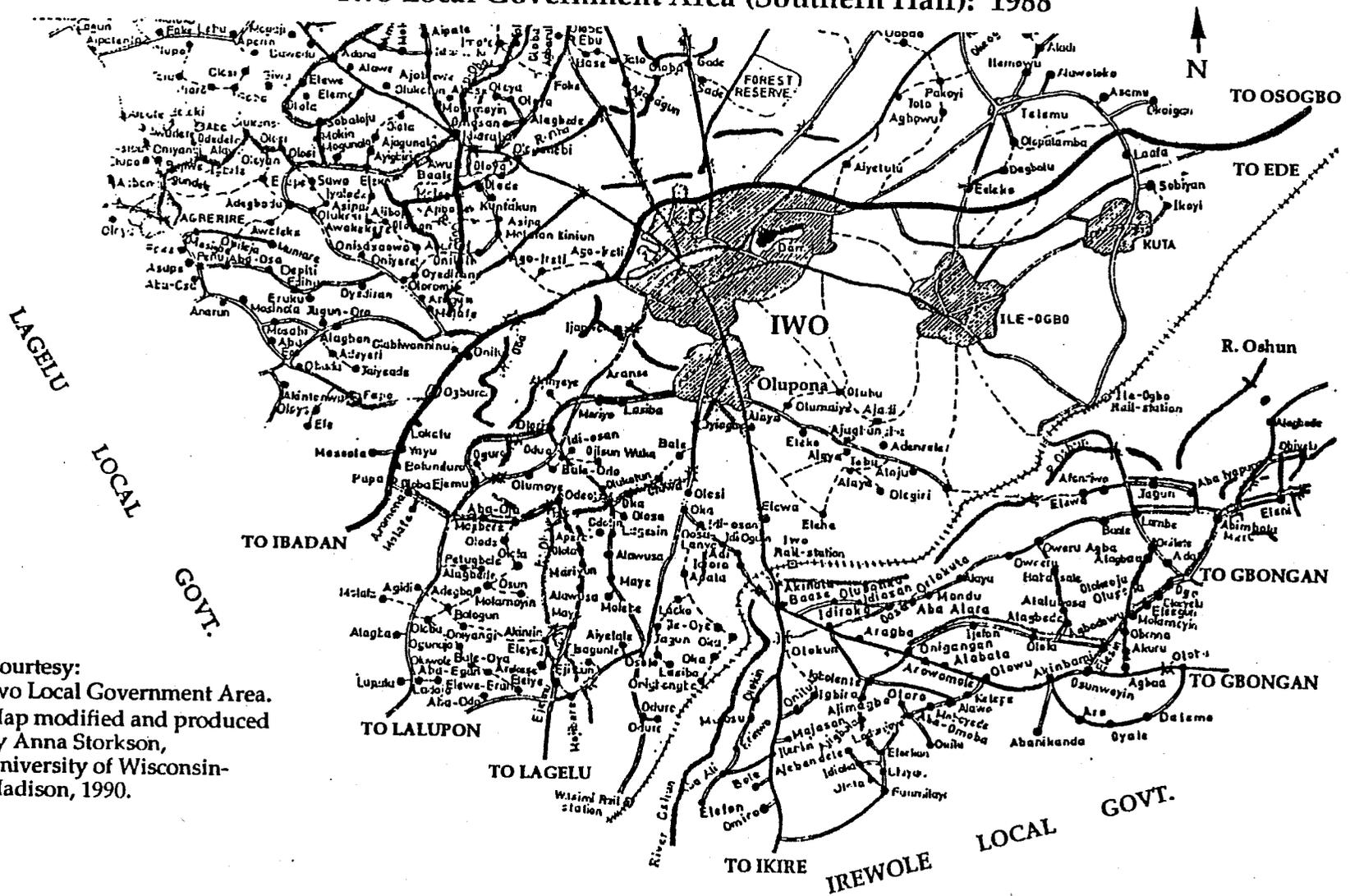
Courtesy: United States Government.
Map modified and produced by Anna Storkson, University of Wisconsin-Madison, 1990

MAP 1.2
Oyo State, 1988: Local Government Areas



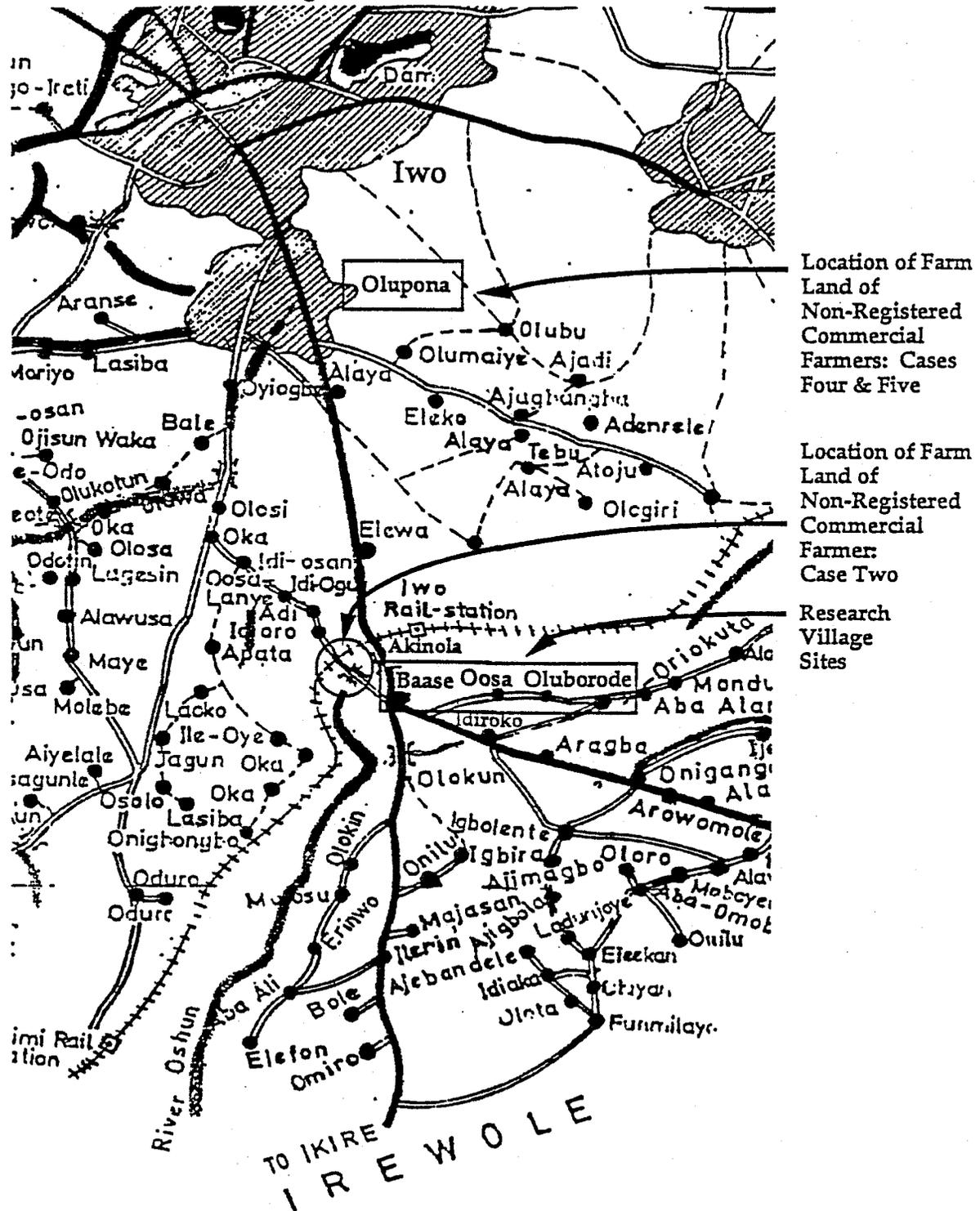
Courtesy: Surveys Division, Ministry of Lands and Housing, Oyo State.
 Map modified and produced by Anna Storkson, University of Wisconsin-Madison, 1990.

MAP 1.3
Iwo Local Government Area (Southern Half): 1988



Courtesy:
Iwo Local Government Area.
Map modified and produced
by Anna Storkson,
University of Wisconsin-
Madison, 1990.

MAP 1.3A
 Iwo Local Government Area (Southern Half): 1988
 Research Village Sites & Location of Farms for
 Three Non-Registered Commercial Farmers



Courtesy: Iwo Local Government Area.
 Map modified and produced by Anna Storkson, University of Wisconsin-Madison, 1990.

The small number of farmers with registered land included in this case study should not be taken to be statistically representative of all farmers with registered land in southwest Nigeria. Nor should the small number of farmers without registered land be considered as representative of all nonregistered farmers in the region. The number of individuals who have registered farm land in Oyo State is very small--less than 1 percent of the total land transactions recorded at the Lands Office in Oyo State were for registration of farmland. However, the farmers chosen provide rich examples that may lead to inferences about how commercial farmers and other elite have exploited the Act and about the interplay between land law, socioeconomic conditions, and tenure practices.

Customary Land Tenure in Southwest Nigeria

The major ethnic group in southwest Nigeria are the Yoruba. Generally, indigenous tenure in the southwest allows for various rights of individuals and groups to exist simultaneously on the same piece of land. One individual may have cultivating rights, another may have grazing rights, and still another may have rights pertaining to tree crops, hunting, or gathering. Communal tenure does not exist in southwest Nigeria. Today all land in southwest Nigeria is claimed by individuals, families, or lineages. Rights in land among the Yoruba may be vested in social groups defined in political, residential, or kinship terms, or a combination of these. The rights that the individual holds will depend on the method of access as well as on his or her status in the household.

Since the beginning of the colonial period new ideas or concepts have been introduced to influence Yoruba land tenure. Largely as a result of the nexus between new economic opportunities and new court-created rules, individualized land and family land tenure emerged. Berry's seminal works (1975, 1987) document changes in land tenure in southwest Nigeria. She demonstrates how cocoa cultivation in the early part of this century contributed to the commercialization of land and the partial privatization of land rights. She also shows how cocoa cultivation and colonial policy contributed to the development of family land tenure. From her work and that of others following her (see Francis 1985), we now know that the *idile* (lineage) is no longer the only important unit of land ownership or control. Many households control land. In fact, many Nigerians argue that it is the "family" that is now the major landowning unit in Yorubaland (Udo 1985; Atteh 1985; Famoriyo 1977). But the issue is muddled by the loose translation and use of the term "family," which may refer to the nuclear family, the household, or the lineage.

Increasingly, whether land is controlled by the lineage or the household, the day-to-day management and use of land are vested in the individual farmer who farms a particular field. It is the farmer who decides how the land will be used and how the crops will be disposed of. Although the lineage is identified as the important landholding unit, "families" and individuals have increasingly assumed rights and responsibilities previously enjoyed by the lineage.¹¹ Today most men gain access to land through inheritance (Famoriyo 1977; Fabiyi

1984); a man inherits the rights to his father's land, although the larger group (lineage or household) may claim ultimate authority over matters such as alienation (sales and sometimes leases) or the planting and cultivation of trees.

Since the beginning of the cocoa era women have gained access to land primarily through their husbands, though they may hire or borrow land or economic trees on their own behalf (Adekanye 1985; Ajayi-Obi 1984; Adeyemo 1984; Spiro 1987; Okuneye 1988; Olawoye, personal communication, 1988). Their husbands give them either a parcel of land or rights to land bordering their husbands' farms. This piece of land is usually loaned to the wife, although she rarely pays any kind of rent or tribute. The husband can take this piece of land back at any time. Women may own land, but rarely do, and almost never in their husbands' villages. Inheritance rules are designed to restrict the transfer of land from one village to another. Although a woman can inherit and own land in her father's village, it is unlikely that she will work the land herself; rather she will rent the land to someone from that village. When a man dies his land is inherited by his children, but often a married daughter will continue to farm where she has in the past in her husband's village. If the children are too young or have moved away, and if the man's brothers have died or are not interested in the property, the wife or wives will control the land. More women are farming today in southwest Nigeria than ten or twenty years ago, but it appears that as tenure has shifted from lineage and family to individual control, women have been unable to increase their access to, or control of, land. As noted in section four, it is likely that women's rights to land have been weakened in the last two decades.

Changes in the rights of "strangers" (*alejo*) or tenants have also occurred. These tenancy relationships, while often criticized, are very efficient and productive. Historically Yoruba have granted land use rights to other groups, either nonkin or non-Yoruba. Vanden Driesen (1971) and Lloyd (1962) both document that rent as a payment for the hire of land was not part of the "traditional" Yoruba system. In the past, dues or tribute could be claimed by a landowner only when land had been put out on lease (either permanently or temporarily), and even then the payment was small. Its purpose was to remind the cultivator that the property was not and never could be his. This payment, known as *isakole*, was "a semi-feudal due, in no way related to what normally passes under the description of rent" (Vanden Driesen 1971, p. 47).

"Rental" arrangements with strangers may be established in two ways, annual tenancy and customary tenancy (Adigun 1961). The more common annual tenancy is the rental of land for a single crop cycle or year in exchange for payment. Rights over existing trees are not transferred, and the tenant is usually not allowed to plant permanent crops. However, if trees are planted they are considered the property of the planter and may enhance the security of his rights to the land. Thus disputes over trees and tree crops are often disputes over landownership. With the harvest of the last crop the tenant either renews the agreement or applies for a new piece of land and pays another fee.

Under the second form, customary tenancy, the tenant has use rights for an indefinite period of time. Although he may not alienate the land, he may have use rights over trees. The customary tenant is an *alejo* who is granted land in perpetuity for a farm or a house. Often his interest is inheritable. He may, within limits, alienate his improvements. He usually pays the landowner some form of tribute or *isakole*, and he may not be evicted unless he commits a serious offense. In both annual and customary tenancy the amount of tribute is determined by the landlord or through a process of negotiation. In many cases the amount paid does not reflect the amount of land being used--a man who has requested one acre may pay as much as one who asks for five. Both annual and customary tenancy agreements are usually verbal; written agreements are usually for less than five years (Famoriyo 1977).

With the introduction of cocoa, strangers became more successful in obtaining land for the cultivation of tree crops (cocoa and palm). This altered rental arrangements and land tenure rights, but the process of change has been uneven (Francis 1984, 1987; Berry 1975). *Isakole* has increasingly become commodified, more a rent than a payment of tribute, and the amount of land borrowed has increasingly determined the amount of rent demanded. The transformation of tenancy arrangements has continued as a result of changing economic and legal opportunities and constraints. However, the transformation has not been uniform. One farmer may have a tributary relationship (payment is in produce and the farmer maintains a social relationship with the landowner), while another farmer has a more commodified relationship (payment is in cash and there are fewer social contacts between tenant and landowner). Or some farmers who rent or rent-out more than one parcel may have both tributary and commercial relationships with the same or different landowners and/or tenants.

Having tenants enhances the security of landowners (Francis 1984). In many ways the tenant/landlord relationship is mutually beneficial. The fact that one has tenants on one's land is an excellent proof of ownership in land disputes, so thus tenants make good witnesses. The tenant helps to increase the owner's security by helping him to hold land. If a farmer allows people from his village or even his own kin to use his land, over time the ownership may become unclear and may be challenged in court. But a tenant can never claim that he is part of the lineage, so there is less likelihood that he will challenge the landowner's rights to the land. Since the tenant is so beneficial to the landowner, it is likely that the tenant's security is also enhanced. Consequently, tenants often feel very secure in their rights to the land they work. In cases where tenants have tried to challenge landowners' rights, the fact that they paid *isakole* was sufficient legal proof of their status as tenants.

By 1970, Vanden Driesen (1971, 1972) found that the modern conception of rent was taking hold in Ife. He described the process as a blurring of the line between rent and *isakole* payments, so that one could not distinguish between them; in many instances all pretense of *isakole* had been dropped and rent was demanded. This process has continued, so that in 1987 Francis concluded that rising population density, agricultural commercialization, and the spread of cocoa cultivation had led to the individualization of rights and the emergence of commodified tenancy. At the same time, the social obligations associated with tenancy have tended to diminish while the cost of obtaining rights in land has risen (Francis 1987, p. 319).

2. SOCIOECONOMIC AND AGRICULTURAL CONDITIONS, AGRICULTURAL POLICY AND THE PEASANTRY

Discrepancies in data have led to widely differing conclusions about the state of Nigeria's economy and particularly the agricultural sector during the Second Republic (1979-1983).¹² What is clear is that the economy has not remained static, and my own observation is that most of the population has suffered from an economic collapse brought about by the effects of the oil boom and bust and the subsequent Structural Adjustment Program. The details of this collapse are relevant to this study.

In 1980 Nigeria's annual oil production earned 23 billion dollars, putting it among the middle-income countries such as South Korea. Petro-dollars fueled a massive boom in infrastructural construction and the importation of raw materials. Income was also invested in manufacturing and to a lesser extent in education. Agriculture was generally neglected. Nigeria became a major food importer, spending billions of dollars each year during the boom period and amassing huge trade deficits as purchases of services, raw materials, and other goods outstripped oil income.

The spending spree and wastefulness that marked the boom years carried over past 1980 when oil prices, demand, and income dropped dramatically. In the years between 1980 and 1984 Nigeria continued to make massive investments in infrastructure and to import large quantities of food. Total imports grew from 722 million naira (US\$1.45 billion) per month in 1979 to 1.2 billion naira (US\$2.4 billion) per month in 1981. Many of these investments and purchases were funded by international and domestic loans and by international lines of credit, so that by the time of the Buhari coup in 1983 Nigeria was bankrupt.

Few saw from the oil boom any benefits such as employment, infrastructural improvements, or lower prices. Most people experienced higher prices, scarcer commodities, and unemployment.¹³ Farmers suffered from higher costs for labor and inputs and from competition from cheap imported rice and maize (Watts 1987). Some were forced out of the market and began to produce largely for subsistence. Those few farmers who did reap higher profits saw these profits gobbled up by higher costs of goods and services. The period witnessed increased socioeconomic differentiation not only among social groups but also within the peasantry (Williams 1980). Berry (1987) found that most of her informants were worse off in 1980 than in 1969. All evidence points to a general deterioration in the quality of life during the 1970s and 1980s. According to an ILO mission report (1982), the number of households below the poverty line grew by 25 percent between 1973 and 1978. During the decade, perhaps one-quarter of rural households suffered from inadequate caloric intake (Malton 1981; Longhurst 1980). These conditions were only to become worse with the economic measures that the government initiated a few years later.

By the early 1980s the oil boom had become the oil bust. In 1983 the economy deteriorated seriously; GNP fell by 4.4 percent and the country had a balance of payments deficit of 3.4 billion naira and a trade deficit of 2.9 billion naira. Debt service consumed 35 percent of federal income. The country faced a credit crisis and trade restrictions. Industry suffered and thousands of people were laid off.

On 31 December 1983, a military coup ended the civilian administration of Shehu Shagari, bringing four years of "democratic" rule to a close. In 1983 and 1984 Nigeria was unable to pay its creditors in England, France, and the United States. The country required additional loans just to meet its debt service commitments. The creditor countries in turn tried to force the Buhari government to accept an IMF structural adjustment program, which among other provisions required devaluation of the naira by 50 percent and reductions in public services.

The new Buhari administration resisted the pressure and instead instituted its own rather draconian economic measures in 1984 in the form of a "Self-Sufficiency Program." Although 80 percent of inputs and spare parts for local industry and manufacturing were supplied by foreign sources, the new government cut imports by 50 percent, which negatively affected production and employment. Between 1983 and 1984 total government expenditures were cut by 40 percent; food imports were also drastically cut. The government set the debt service ratio at almost 44 percent of federal income.

Buhari was overthrown in a bloodless coup on 27 August 1985. His successor, Major General Babangida, immediately declared a 15-month economic emergency, during which an Economic Stabilization Program was implemented. The program included the following: (1) 30 percent levy on all imports, (2) tax of 2 percent to 20 percent on workers' salaries, (3) removal of 80 percent of the subsidy on petroleum, and (4) extension of the wage freeze. The program also continued many of the policies introduced by the Buhari administration. These initiatives had little effect, however. Since there was little or no credit to import raw materials needed for local industry, capacity utilization remained low and urban unemployment continued to escalate. The rate of inflation also continued to increase unabated.

In July 1986 the Structural Adjustment Program (SAP) was announced and was much more austere than the program previously recommended by the IMF. The main component of the program was the Second Tier Foreign Exchange Market (SFEM),¹⁴ which established an auction for the naira where it was traded on the open market and its value allowed to fluctuate. The program further slashed imports of raw materials and processed food products and banned the importation of wheat, maize, malt, and rice. By 1987 imports had been reduced to one-third of their 1982 levels. Privatization of parastatals was pursued and the six commodity marketing boards were phased out. The government hoped the new policies would attract foreign investors. It also continued many policies initiated under the Economic Stabilization Program.

As soon as SFEM came into operation the naira fell in value, affecting inflation and output. In 1982, 1 naira was valued at US\$2 (\$1 = .5N). In 1986 prior to SFEM the value of the naira was \$.66 (\$1 = N1.5), but after the first auction in September the value fell to \$.28 (\$1 = N3.5). In 1989 the value of the naira fell further and was pegged at 7.5 to the dollar (\$1 = 7.5N) on the official market as of October 1989; by the first quarter of 1991 it was worth only \$.10 (\$1 = N10).

The removal of subsidies in the period between 1985 and 1988 had enormous inflationary effects, particularly since they were removed at one stroke rather than phased out. From one day to the next in 1988, for example, costs for telephone, telegraph, and wire services rose by 650 percent, with similar substantial increases in postal charges. In March 1988 fuel prices were raised by from 7 percent to 180 percent [petrol by 7 percent, diesel by 29 percent, kerosene by 50 percent, and motor oil by 180 percent (*Tribune*, 21 April 1988, p. 7)]; petrol prices were raised again by 42 percent in 1989 (and continued to rise in the period from 1989 to 1991). Each time fuel prices have been increased transport fares have also shot up, by over 100 percent in some cities. These increases in transport fares push up other costs, particularly for foodstuffs. Inflation has soared since 1986, although it is difficult to determine the precise figures since estimates vary widely from source to source. Current estimates range from 15 percent to 500 percent per annum (Myers 1990:103).

The government asserted that the Structural Adjustment Program was designed to help Nigeria meet its debt obligations, but it is clear that SAP has contributed to indebtedness. Watts (1987b, p. 5) calculated Nigeria's total foreign debt to be 20 billion dollars when the Buhari administration assumed power in 1984. Others estimated the debt in 1985 at between 13 and 15 billion dollars (*Newswatch*, 4 September 1989, p. 47). In December 1987, seventeen months after SAP was introduced, the Central Bank of Nigeria put total debt at 24.5 billion dollars. In 1990 *Newswatch* (18 June 1990, p. 19) estimated current debt at 31.36 billion dollars. Depending on whose figures we use, debt has increased since the beginning of the Structural Adjustment Program by from 46 percent to 128 percent.

The combined pressures of SAP, including the removal of subsidies, the increased cost of imported goods such as agricultural and industrial inputs, the lack of capital, and the devaluation of the naira have had a dramatic effect on food production and prices. Food shortages and high prices have fueled heated debates and confrontations between Nigerians and the state (see Myers 1990, pp. 108-112).

As of this writing, SAP has done nothing positive for urban workers. Salaries have been frozen, the value of the naira has eroded substantially over the last few years, inflation has increased, food is scarce, transportation is almost unavailable, and educational opportunities have been limited. Human rights continue to deteriorate and armed robbery and violent crimes are daily occurrences; drug trafficking has reached an all-time high. *This Week* (20 February 1988) estimated that the average income of a low-income urban family (both husband and wife working) was N120 per month. My own estimate in 1989 was that the range for low-income urban families was between 80 and 500 naira per month. In 1988 the government considered

an urban poor family to be one that earned less than 150 naira per month; yet minimum wage for civil servants was 125 naira per month. In 1982 annual per capita income had been estimated at between US\$812 and US\$1,110; in 1988 the government acknowledged that per capita income had fallen to about \$370 a year (World Bank 1989).

Since early 1987 the Nigerian government has claimed that farmers are the major beneficiaries of SAP. In December of 1987 President Babangida stated that the agricultural sector had been reinvigorated by the Structural Adjustment Program. However, evidence indicates that this is far from accurate. As a *Newswatch* editorial argued (12 June 1989, p. 19), the government's assertions "are neither borne out by facts or by logic." Producer prices for the major cash crops did shoot up after SFEM was announced and the commodity boards closed, but the benefits were often short-lived and profits were gobbled up by middlemen and large domestic and foreign firms.

The Nigerian Centre for Development Studies has also disputed government claims, saying that higher prices for produce have not translated into unprecedented prosperity in rural areas, and that the village farmer has been the main victim of SAP. The Centre argued in a 1989 report, "It is an irony that those rural dwellers worst hit by SAP appear the most prosperous to government officials. They do not have access to credit, the costs of inputs like fertilizer and labour are also too high." The report went on to predict that the overall impact of SAP on farmers would be decreased food production in 1989/90. In contrast, the Central Bank of Nigeria reported an increase in the aggregate index of agricultural productivity of 6.1 percent in 1989, compared to an increase of 3.5 percent in 1988. It also reported that crop production rose by 7.4 percent in 1989, compared to 5.6 percent in 1988 (see *Newswatch*, 2 July 1990, p. 39).

Near my own research site, a local government official in Iwo LGA believed that SAP has not been good for farmers. His summary of the impacts included the following observations: (1) prices of inputs have risen dramatically; (2) farmers have to borrow more now to plant crops and hire labor than before SAP; (3) they have to sell crops as soon as they harvest them, "at dirt prices," to repay their loans; and (4) while some crops fetch slightly higher prices, the costs of living have also increased, outstripping any gains (personal communication, August 1988).

My own observation is that farmers are reaping very few benefits from the Structural Adjustment Program. Most of the peasant farmers I interviewed indicated that they received higher prices for some crops, but that profits were being wiped out up by the increases in costs of foodstuffs and services such as transportation. This is not to suggest that some people are not benefiting from the opportunities provided by the economic changes. Rather I would argue that: (1) most farmers have not reaped the rewards of higher prices at the markets, and in fact most rural households have actually been hurt by the increased costs; (2) in general the difference between what a farmer receives for his crop and what the consumer pays is not received by one person, but rather diffused among many people--middlemen, police, or government officials. Profits are also consumed by taxes, fees, and the like.

Agricultural and Credit Policy

Agricultural policy in Nigeria has historically favored cash-crop production. In the postindependence period the government invested in mechanized and irrigated large-scale agricultural operations. These operations were largely geared toward the production of cash crops for export. However, little money was invested in small-scale food crop production. As a result, output of staples declined throughout the period from 1962 to 1968, while exports of cash crops grew. From 1960 to 1967 the value of agricultural exports grew by 7.5 percent per year, despite a fall in producer prices. On the other hand, growth in domestic food production between 1960 and 1969 was nearly zero (Teal 1983, cited in Watts 1987a). The value of food imports rose from 42 million naira in 1960 to 105 million naira in 1971. These figures imply that per capita food supply decreased during this period (Watts 1987a; Teal 1983; ILO 1982).

Agricultural and other development goals were largely put on hold during the civil war period (1967-1970). Between 1970 and 1975 the federal government allocated one billion naira to the states for agriculture, but most of this was diverted to other purposes (Watts 1987b, p. 18). In 1981 federal allocation to agriculture was raised to 13 percent of the budget, but the states spent only 5 percent, diverting most of the balance to finance imports of raw materials and foodstuffs.

The current Babangida government has made it a point at least to present the appearance of investing in the rural sector, though the amount as a percentage of capital and recurrent expenditures has been small. The president increased the allocation to agriculture from 264 million naira in 1985 to 706 million naira in 1986. However, very little of the available foreign currency is reserved for importation of agricultural inputs (*Newswatch*, 19 June 1989, p. 34).

In 1988 and 1989 the administration announced a series of agricultural policies designed more to ease economic problems than to boost agricultural output. For example, in January of 1988 the National Directorate of Employment (NDE) ordered each state to provide 500 hectares of land on which to employ 100 people in farming. Each farmer would receive 5 hectares, plus seeds and tools. The Directorate also promised to provide 11,500 naira to each participant for the purchase of inputs and additional equipment. Thus far many states have been unable to comply because they have been unsuccessful in acquiring land or the promised funding from the federal government. In February 1988 Babangida announced a new "agricultural policy." Two points in the program were (1) a limit on the maximum number of hectares of land an individual or organization could hold (something already provided for by the Land Use Act), and (2) the introduction of a new agricultural insurance program.

Since the civil war there has also been a great deal of public criticism of the unavailability of credit for peasant and small-scale capitalist farmers. Various administrations have attempted to respond to this criticism by initiating policies to enhance opportunities for

credit in the rural sector, but most of these policies have been unsuccessful.¹⁵ The Babangida government too has attempted to intervene in the provision of credit for farmers. In October 1989 Babangida announced the opening of the People's Bank of Nigeria (PBN), designed primarily to extend credit to underprivileged Nigerians who cannot ordinarily secure loans through conventional banks.¹⁶ While farmers can apply for loans, it appears thus far that most of the loans have been secured by urban-based traders and businessmen. The progress of this scheme deserves close attention.

3. LAND LAW AND ADMINISTRATION AND THE LAND USE ACT OF 1978

Land Law and Administration prior to the Land Use Act

Land law and administration differed between the north and south until 1978, when the Land Use Decree was promulgated (modeled after the land laws of Northern Nigeria).¹⁷ The colonial government in Lagos feared that commercial activities would create landlessness and thus foster discontent and rebellion (Francis 1986). Consequently, early colonial land policy was geared to preventing the emergence of a large class of landless peasants by limiting the development of large freehold plantations and by preventing alienation of land to nonnatives. This was largely accomplished in northern Nigeria through the Northern Nigeria Lands Committee of 1910 and in southern Nigeria through the West African Lands Committee, which sat from 1912 to 1916 (see Famoriyo, Fabiyi, and Gandonu 1977; Francis 1986).

Like the Act, the first comprehensive land law in Northern Nigeria, the Land and Native Rights Proclamation of 1910, assigned all land to the control of the governor of Northern Nigeria. Title was vested in the state and an occupier's interest was defined as a "right of occupancy." Lugard (1916), Meek (1949), and others who came later (Francis 1984; Watts 1983; Omotola 1988) have argued to one degree or another that the laws of Northern Nigeria were ineffectual and their effects negligible. As early as 1916 Lugard asserted that the land laws of Northern Nigeria were a dead letter as far as native rights were concerned. Meek noted that native authorities continued to have control over all land transactions and disputes. The laws have also been criticized for distorting customary and Islamic tenure arrangements. Starns (1974, p. 20) suggested that the land laws of Northern Nigeria "froze" the development of the land tenure system, inhibiting innovations and response to socioeconomic opportunities. A few have argued that the laws were successful (Udo 1985, p. 21). Ineffectual or not, the laws of Northern Nigeria served as a model for the Land Use Act of 1978.

Land Law and Administration in Southwest Nigeria in the Colonial Period

Land tenure in the south was a controversial issue from the beginning of the colonial period. The colonial government in Lagos and the British government (in the form of the Privy Council) differed over land tenure policy. Theoretically, "customary" land rights continued unaltered, even though Lagos had been ceded by Africans to the colonial government and a protectorate had been established over southern Nigeria. This principle that customary rights should continue was declared in the Privy Council's judgment in *Amodu Tijani v. Secretary of Southern Nigeria* (1921).¹⁸ It should also be noted, however, that the Privy Council

declared that the colonial government had limited rights of administrative interference over native land rights (Omotola 1988). Despite the fact that the Privy Council paid lip service to the principle of respecting customary land rights, colonial activities altered native tenure institutions, largely through compulsory acquisition and through the introduction of English conveyancing practices (Omotola 1988).

In the southwest, land policy evolved as a response to the tenure changes brought about by the economic development of the area. Commercialization of property rights in the urban centers, particularly Lagos, was fueled by the growing number of people flocking to the cities and bidding for limited land. The commercialization of land in rural areas was due largely to the development of the cocoa industry.¹⁹ These changes in land tenure relations in southwest Nigeria produced a great deal of tension and numerous disputes. Many of the disputes led to litigation or violence.

The increase in disputes stimulated calls for land reform early in the century. However, attempts to impose a law similar to the Northern Nigerian Land Tenure Law were resisted by colonial and African interests (Francis 1984, p. 6; Francis 1981). The authorities largely limited their efforts to preventing landlessness by prohibiting the sale of locally owned land to foreign interests.²⁰

By the mid-1920s the number of confrontations and court cases over land had grown substantially. Insecurity of title remained at the center of the debate. The government did not confront this pressure until 1935 when it enacted the Registration of Titles Act (Polishuk 1985; Simpson 1957; Oluyede 1978). The Registration of Titles Act was a feeble attempt to resolve the mounting land tenure disputes. It did not recognize the more numerous customary forms of tenure, such as family land tenure, and instead focused on urban land problems, despite the growing number of conflicts and court cases in rural areas (Simpson 1957, pp. 11, 20; Nwabueze 1972, p. 533; Polishuk 1985).

As a result of the land laws and the influence of British commercial interests, a dual system of land tenure emerged in southern Nigeria (Park 1965). The first, a system of leasehold and freehold titles, was established by the British to recognize or sanction land sales by Africans to expatriates. The second system was the "native" or customary land tenure system. Although it was largely ignored by the English laws, it was recognized and changed through the court system. The development of "family land tenure" illustrates how the colonial court system influenced the customary land tenure system (Bruce 1986; Park 1965; Allott 1980, 1984; Woodman 1969). Park (1965, p. 18) has demonstrated, however, that the two systems were not mutually exclusive. Land held under English law could pass into the domain of customary law, and land held under customary law could pass into the jurisdiction of English law.

By the 1950s there were numerous and often contradictory common law decisions, statutory laws, and administrative policies designed to regulate the many indigenous land tenure arrangements in southern Nigeria. British and Nigerian government officials and academics²¹

began to debate the merits of establishing a more uniform land tenure system. The Simpson Committee, for example, addressed the issue of family land tenure and recommended that the ownership of every family parcel be registered, as was the case for freehold (Simpson 1957). The Simpson and Western Nigeria Committees focused on the issue of individualization of holdings (Western State of Nigeria, 1962). Both committees discussed the merits of individualizing customary landholdings, making them more like freehold tenure. The government of Western Nigeria, influenced by the Simpson Report, established the Glover Working Party, whose recommendations (Glover 1960) led to the passage of the (Western Nigeria) Registered Land Act of 1964. But by 1978 this law was still not enforced, and the question of its implementation became moot with the promulgation of the Land Use Act.

In the 1960s and early 1970s many more voices, both academic and official, joined in the call for land tenure reform.²² The patchwork of tenure laws and arrangements and the continued persistence of customary tenure systems were increasingly blamed for inhibiting agricultural development. Critics maintained that customary forms of tenure failed to provide sufficient security, constrained land markets, were inefficient, encouraged speculation, created fragmentation, and inhibited enterprising entrepreneurial farmers and commercial developers. Customary forms of tenure were also criticized for stimulating out-migration of young men and women, thereby creating labor shortages in the villages (Famoriyo et al. 1977); for preventing equitable access to productive opportunities on the land (Famoriyo 1985); and for providing support for unproductive tenancy arrangements (Adegboye 1964, 1966; Famoriyo 1973; Ike 1977; Udo 1985). In the 1960s R.O. Adegboye (1964, 1966, 1967) characterized land tenure relations in southwest Nigeria as inefficient and an obstacle to raising productivity both per acre and per farmer. He extended his analysis to the entire country when he argued that any society seeking land reform must choose between economic efficiency and retention of traditional ties and institutions.

The government's official position was that land tenure rules, especially in the southern part of the country, were leading to numerous and costly cases of litigation; they were inhibiting government and private interests' opportunities to acquire land for development projects and creating economic hardships by hindering agricultural growth, forcing the government to increase food imports. Most of the land problems (speculation, litigation, and the state's inability to acquire land) related to urban land. However, it was customary land tenure and rural land practices that came under the greatest fire.

After the civil war ended in 1970, the state and wealthy Nigerians started to reap the benefits of oil. Land, especially urban and periurban land, became a prime investment choice, and the state was increasingly forced to compete for it with private interests. At the same time, there was a great deal of collusion between the state and private interests. Civil servants used their positions to purchase prime land for speculative purposes. Despite the loud criticisms leveled against customary land tenure and rural production (see Nigeria 1970, 1975), it was economic policy and interest in urban areas that led to speculation, inflation, litigation, and other land problems. The government had laws that would allow the state to acquire land for development purposes, but due to capitalist interests and the state's own "fractured nature"

(Watts 1987b; Berry 1987), the state was unable or unwilling to use these laws to resolve any tenure problems.

In the mid-1970s many of the southern state governments attempted to deal individually with what they viewed as tenure-related problems. The state governments enacted numerous laws, most of which dealt only with urban land issues. Many of the laws enhanced military and civilian elites' access to land (Myers 1990, p. 235). This plethora of state laws contributed to the already confusing landscape of land laws, policy, and administrative practices.

The 1977 Land Use Panel

As a result of an increase in criticism and litigation and its own inability to secure land for development projects, the federal government appointed several panels and commissioned at least one major study to investigate the "land tenure question" in the early 1970s (see Myers 1990, pp. 168-76). In 1977 the government appointed the Land Use Panel (LUP), which drew up the recommendations that eventually led to the promulgation of the Land Use Act.

In the years since the Act came into being a great deal of controversy has surrounded the LUP, its members, its terms of reference, and its recommendations. The controversy began with the appointment of the panel and has continued to the present (Myers 1990, pp. 236-38). Its members were not of one mind, with the result that both majority and minority reports were prepared. The majority report recommended against land nationalization, although "all members were convinced there was a need for some reforms" (Udo 1985, p. 79). It recommended the introduction of compulsory title registration in urban areas, the establishment of a deeds registry applicable throughout the country, and the abolition of customary forms of tenancy (Myers 1990, pp. 237-38).

The minority report, authored and supported by one member (R.K. Udo) recommended nationalization of land and implementation of a uniform land law in the south similar to the 1962 Land Tenure Law of Northern Nigeria, a recommendation based upon Udo's assertion that the Land Tenure Law of Northern Nigeria had been very successful. He attributed the low rate of land litigation in the north to this law. Further, Udo argued that the proposals contained within the majority report would constitute a major obstacle to meaningful change.

The Land Use Act

In February 1978, the federal military government under the leadership of General Obasanjo issued a white paper accepting the recommendations of the minority report. The white paper argued that the northern Land Tenure Law would be suitable for the needs of the southern part of the country. A month later the government promulgated the Land Use Decree

(Act), which nationalized all land in the country and placed it under the control of the state governors. As the military government was planning to hand over power to an elected administration in 1979, it incorporated the Act into the constitution of 1979, thus making abrogation, repeal, or modification almost impossible.

The law that emerged did not reflect the findings of most of the panels, committees, and studies commissioned to investigate the land problem. Although the major problems identified concerned urban land use and tenure, the Act included sweeping provisions pertaining to rural land. Very few farmers were consulted by those charged to study the problem, and the recommendations received from farmers and traditional authorities were not incorporated into the recommendations of the panels, committees, and studies. The policy that has emerged is highly contradictory in both intent and content; consequently its provisions, objectives, impact, and administration have all been hotly debated.

The first part of the Act vests all land in each state in the military governor of that state. Individual title is replaced with a right of occupancy. This first provision has been the most controversial, and many have argued that the Act extinguished all previous forms of title and nationalized all land (see Justices Eso J.S.C. and Obaseki J.S.C., cited in Nnamani, 1 April 1989, p. 11). This provision is contradicted by a later provision (section 36), which suggests that rural land held under customary rules may continue to be regulated by customary tenure practices.

The Act gives the military governor of each state powers of land management for all land in urban areas. He is to be assisted by an advisory panel, the Land Use and Allocation Committee. The management and control of all rural land is vested in the respective local governments. Each local government is also to be assisted by a Land Allocation Advisory Committee, whose members shall be appointed by the military governor in consultation with the local government. The advisory committees also have the power to settle disputes and determine compensation payable for improvements upon revocation of rights of occupancy. However, many states have centralized administration of the Act so that both rural and urban land is administered by the state government.

Part Two of the Act establishes the land user's rights as statutory or customary and makes distinctions between Statutory Rights of Occupancy and Customary Rights of Occupancy. Although the governor can grant a Statutory Right of Occupancy to any person for urban or rural land, in most instances the Statutory Right appears to apply to urban land, while the Customary Right applies to rural land. Part Two also outlines the terms of the Statutory Right of Occupancy, which is awarded in the form of a Certificate of Occupancy (C of O). The period of the award, or term of lease, is determined by the state government and not stipulated in the law. Although the wording of the Act is unclear, it also appears that the governor may grant land to those who apply for it. In addition, the governor has the power to set the rent for any land granted under a Statutory Right. He may revise this rent, with few restrictions, at his discretion or waive the rent in circumstances where it would create hardship. Once a C of O is granted all previous forms of title are extinguished.

The power of local government with respect to rural land within its jurisdiction is more limited. The local government may grant a Customary Right of Occupancy to any person or organization for agricultural purposes, subject to the limitation that no person may hold more than 5,000 hectares for grazing purposes or more than 500 hectares for cultivation. The jurisdiction of a local government does not extend to urban centers within its boundaries, to land subject to Statutory Rights of Occupancy, to mineral lands, or to land compulsorily acquired by the federal or state governments. The new tenure system limits interests in land to a single holder who has the sole right to, and absolute possession of, all improvements on the land. The Customary Right of Occupancy defines terms of tenure including access, succession, duration, and rents. Again, although it is not explicit, it appears that the local government can also grant land to those who apply for it. The law stipulates that any Nigerian can apply for land or Certificates of Occupancy for land anywhere in the country, irrespective of the applicant's ethnic origin or gender.

Part Three of the law contains provisions pertaining to the governor's powers regarding rent. Parts Four and Five concern land alienation, surrender of Rights of Occupancy, and revocation of rights. Since the state governments hold radical title to all land, unapproved alienation of land appears illegal. A rights-holder or occupier may, subject to the prior consent of the governor, transfer, assign, or mortgage any improvements on the land. The devolution of Rights of Occupancy, whether statutory or customary, may follow the customary law existing in the area where the land is located. In other words, inheritance may be dictated by customary laws and rules. The law seems to contradict itself here when it states in the next paragraph (24b) that the partition or division of Statutory Rights into two or more parts on devolution by death is forbidden. Rights of Occupancy, particularly Statutory Rights, may be revoked for either overriding public interest or a breach of the terms of the contract (that is, the Certificate of Occupancy). The law contains provisions for compensation for land or rights acquired or revoked by the government. Compensation may be in cash or in kind, but is limited to unexhausted improvements on the land.

Part Six of the law covers transitional provisions. It defines the status of existing interests in urban and rural land before the law came into force and establishes the conditions for their transformation under the new law. Despite unclear wording, Part Six also appears to ban urban and rural tenancy. This provision has since been debated and frequently contested in court.

In rural areas a land occupier or holder may continue in possession of all agricultural land (within the maximum limits described above) as if a Customary Right of Occupancy had been granted. This provision too has generated a great deal of controversy. It appears to grant tenants possession over land that they occupied prior to enactment of the Act, thereby granting them greater rights over the land than they had previously and dissolving any obligations that they might have had to the earlier owners of the land. With the proper identification, a rights-holder may register and receive a certificate from the local government demonstrating his Customary Right of Occupancy. The Act forbids division or fragmentation, despite previous sections that accept customary inheritance practices.

Part Seven of the law stipulates the jurisdiction of courts with regard to questions about or disputes arising from the law. There are aspects of the Act which may not be questioned in court. These include questions relating to the vesting of the land in the governor of each state, the rights of the governor and the local government to grant Statutory and Customary Rights of Occupancy, and questions concerning the amount or adequacy of compensation paid under the law.

Since the promulgation of the Act the law has been highly criticized and its meaning hotly debated. The law has resulted in a great deal of litigation and violence (see James 1987; Yakubu 1983; Omotola 1982, 1985; Okpala 1978; Udo 1985). Traditional authorities are among the Act's most vocal critics, having objected to it soon after promulgation. The government rushed to allay their fears by sending many high-level military officials to explain the content and objectives of the law. Traditional authorities were reportedly told that their powers would not be compromised, and in fact many of them were eventually drafted to sit on the Land Use and Allocation Committees and the Land Allocation and Advisory Committees (see Francis 1984; Nnamani, 29 March 1989). This practice only added to the confusion surrounding the law.

Impact of the Land Use Act

Security of Tenure and Agricultural Productivity. As noted above, one of the state's reasons for promulgating the law was to enhance security of tenure and thus contribute to agricultural productivity. Some authors agreed shortly after the Act was promulgated that it might create more secure tenure conditions, which would lead to greater investment and productivity (see Famoriyo 1979; Uchendu 1979). Others were not sure about the potential contribution to security and agricultural production (see Okpala 1978). Authors from the first group have revised their opinions as time passed, and Okpala (1982) and Famoriyo (1985, 1987) have recently criticized the law for aggravating the problems that it was supposed to remedy.

These authors and others now openly argue that the law has not increased security or assisted the country in meeting its agricultural objectives. Land lawyers and land officers have commented that the law does not enhance a holder's security; a deeds officer at the Lands Office in Ibadan noted that the law has actually introduced insecurity that did not exist before. The deeds officer said that there has been an increase in questions regarding ownership and those questions must now be resolved by the land office. Even after a certificate is awarded, questions may remain regarding title and security. Omotola has stated that a C of O does not enhance security: "The C of O does not improve the title of the holder. If the original title is inaccurate or invalid, the C of O will not stand up in court."²³ Although he could not provide any examples, Omotola thought that there had been C of Os successfully challenged in court. In contrast, one senior member of the Forestry Department at the University of Ibadan argued that if he had not registered his land he would have lost it to the previous owners in a land dispute. In 1991 his case was before the Supreme Court.

No one has suggested that the law has stimulated agricultural investment and output, although there have been some rather vague suggestions regarding the possible positive effects of the law. The Nigerian Supreme Court Justice, Nnamani, said that it would be wrong to say that there has been no benefit from the Law: "It has provided a uniform policy for the whole country, which cannot but help the uniform, orderly, social and economic development of the country" (*Guardian*, 6 April 1989, p. 10).

It is possible to suggest that since the law facilitates government acquisition of land, some of which is used for large-scale agricultural projects, it has contributed to agricultural output. However, there is little evidence to suggest that the large-scale projects are more productive than the combined output of the smallholder farms confiscated (see also Watts 1987).

Omotola (personal communication, March 1988) said that the only positive aspect of the law is that it allows "expeditious take-over of land by the government; otherwise the law is an impediment to development." But it is not clear that the government is always successful in using the law in this way. In 1983 the Shagari administration identified the law as one of the factors hindering food production (*Guardian*, 24 November 1983, p. 1, cited in Udo 1985, p. 185). Twenty-two financial institutions reportedly agreed to a statement that the Act was a "cog in the wheel of agricultural development in the country because of the way it was operated," and asked for its abrogation (*New Nigerian*, 25 February 1984, p. 1, cited in Udo 1985, p. 185). These opinions are echoed by staff at the Lands Office and other social scientists.

Nevertheless, others have suggested that the law has not contributed to the decline in agricultural output. For example, Udo (1985, p. 9) wrote, "An increasing number of ill-informed people have continued to blame the [law] for the worsening food situation in the country." In ascribing deteriorating agricultural conditions to other socioeconomic factors Udo may be correct.

Impact on Distribution of Land. Much of the published literature indicates that the law has not helped farmers, particularly tenants, acquire land.²⁴ This seems to apply more to southern than to northern Nigeria. Many of those interviewed noted that the traditional authorities remain in control of land or continue as central figures in rural land administration, and that customary land use practices prevail. They suggested that as a result farmers are still prevented from acquiring land they want or need (see also Famoriyo 1984; Osemwota 1989). Three years after the promulgation of the law, Okpala (1982) wrote that powerful interests such as traditional authorities and urban elites had been able to impede government action by preventing land acquisition and surveying. As a result hardly any land in the southern part of the federation had been allocated. While it may be true that traditional authorities have preserved their role as land administrators and that customary practices prevail--two facts that may not be dependent on one another--it is not at all clear from the literature that these practices hinder farmers from acquiring land or restrict their use of it, at least in Oyo State (see Udo 1985; and Atteh 1985). The Act has not limited peasant farmers' acquisition of land, though it has affected tenancy arrangements. If anything, the

law may have disappointed would-be middle-class capitalists, including bureaucrats, who had hoped that the Act would help them acquire land.

Some have commented that the law has created opportunities for land grabbing by the military and civilian elites (Francis 1988; Okpala 1982; Koehn 1983; Fabiyi 1988; Ohiorhenuan 1988; *South Magazine*, March 1988). Okpala predicted this outcome soon after the law was promulgated and later (1982) argued that his prediction had proved accurate. A senior official at the Nigerian Institute of Social and Economic Research (NISER) also argued that the law created opportunities for the military elite to acquire land. He referred to the "retired military syndrome," in which military elite move from Dodan Barracks to the board rooms of large corporations, agribusinesses, or their own farming enterprises. He added that this process was contributing to the marginalization of peasants in Oyo State and elsewhere in the country (see also *Newswatch*, 14 August 1990). I believe that this official is referring to the opportunities that the law has created for elite to acquire land, thus leading to marginalization of small farmers.

Shortly after the law was promulgated, Uchendu (1979) argued that it would preserve the existing inequalities in land distribution between peasant and elite commercial farmers. "The Law fails to address existing inequalities that tend to be cumulative and thus give disproportionate access to the rich and powerful," he asserted (Uchendu 1979, p. 32), and his projections appear to have been accurate. Nnamani (1989) wrote that the limits on the amount of land held by each person have been totally ignored and that some elite have amassed large tracts of land. He noted that there is less land today for the average Nigerian than there was before the law. This comment was echoed by Ega (1990, personal communication) and the Political Bureau (1987), which in its final report noted that small-scale producers were being edged out by commercial farmers, who were amassing large holdings.

Impact on Customary Tenure and on Men and Women Peasant Farmers. In the ten years since the Act was promulgated there has been very little empirical research focusing on its impacts on customary tenure arrangements or the socioeconomic relationships of peasant farmers. Most of the studies that address these impacts contain little data, rely on anecdotal evidence, or have other methodological shortcomings.²⁵ Two of the most comprehensive studies were conducted by Francis (1984) in southwest Nigeria and Koehn (1984) in northern Nigeria.

Francis found that the law was ambiguous in the area of alienation rights of customary landholders, but he also believed that the impact of the law in the countryside was negligible. His work has important implications for customary tenancy arrangements, as is discussed below. Koehn attempts to illustrate how "state gate-keepers" utilize the provisions of the law to exclude poor urban workers and rural peasants from the C of O application process and thereby from acquiring land. One of his more important observations is that middle-level bureaucrats, administrators, and military officers have benefited proportionally more than the traditional elite or urban-based capitalists. This has important implications for our understanding of who exploits the Act. Not only is the land acquisition terrain contested by

peasants and elites, but it is also contested among various levels of the capitalist class. This is discussed in more detail in section five below.

The academics and administrators I interviewed all argued that customary land tenure practices are unaffected by the law. Several also asserted that the law has not succeeded because farmers have not responded to it. As I demonstrate in sections four and five, both assertions are incorrect.

Very little literature discusses the impact of the law on women farmers (Olawoye 1985a, 1985b, personal communication, April 1988; Okuneye 1988; WIN 1985; Okeya 1980; Okali 1986). Many of the academics, policy planners, and administrators with whom I spoke were unconcerned about how the Act might affect women's use rights.

And finally, Okorie (1988) argued that the law has helped to incapacitate farmers. Since the state issues Certificates of Occupancy, which are supposed to authenticate ownership, farmers are forced to register and acquire this document before they can acquire bank loans. If a farmer does not have a certificate, Okorie alleges, he will not get a loan. This is an interesting assertion, but unfortunately there is no evidence to support it, and his assertion may not be completely accurate (see section four below).

Impact on Rural Tenant Farmers. Paul Francis (1984, 1986) has contributed some of the most important observations on the impact of the Act on tenant farmers in southwest Nigeria. He argued that one of the main areas of ambiguity in the law pertained to concurrent or collateral rights in land. Although no part of the law specifically outlaws tenancy and the payment of rent, the issue is confused by the muddled wording of the law and by statements of the Obasanjo administration that implied that there was no longer any obligation to pay ground rent. This implication was picked up by social scientists, who have asserted that the law does indeed outlaw tenancy; some have even suggested that the Act has empowered tenants to assume control of land and register it (Fabiya 1984, p. 21). This issue has been further complicated by the numerous and often contradictory court rulings on the subject of landlord-tenant relations.²⁶

Approximately two years after the promulgation of the Act, Francis conducted field interviews in Ibokun, Oyo State, to determine the impact of the law on landlord-tenant relations. His survey (published in 1984) clearly documented how having tenants helped to enhance the security of landowners. In many ways the tenant-landlord relationship was mutually beneficial. He found that the reaction of tenants to the law was varied and dynamic. Soon after the law was passed some tenant farmers stopped paying *isakole* (tribute). Some who refused were later "persuaded" to pay, but others paid a reduced amount or renegotiated their arrangements with the landowners. Still other tenant farmers--sixteen of thirty-four interviewed--continued to pay the usual sum; they did so at least in part because they were dependent on continued good relations with their landlords. Many were cocoa farmers who needed annual new allotments of land to grow food crops. As Francis (1984, p. 7) wrote, "To not pay *isakole* on their cocoa land would have jeopardized these other arrangements."

It is interesting to note that these farmers exploited only this aspect of the law. None of them attempted to secure the land for themselves by registering it and acquiring a Certificate of Occupancy--a potentially life-threatening endeavor.

Landlords also reacted in varied ways. Some did not demand continued payment of *isakole*. Those who did demand payment went about it in two different ways. Some tried personal persuasion, while others sought the help of traditional authorities. Francis noted that in the years since the Act was passed, fewer and fewer people had continued to pay *isakole*. He concluded that rather than introducing an economic rationalization of tenancy, the law did the opposite. The law made the payment of *isakole* much more personal and political, straining relationships between landowners and tenants.²⁷ The positions of both landowners and tenants were made less secure, which in the long run adversely affected land use and agricultural production. In research conducted in 1981, Fabiyi (1985) documented changes in tenancy relationships that tend to support Francis's findings.

The impact of the law on larger tenant communities such as the Modakeke in Ife and the Agbasa Urhobos in Warri has been similar to that reported by Francis. Udo (1985) noted that after the Act was passed there was an increase in the number of violent riots in these communities resulting from struggles between landlords and their tenants over payment of rent.

Many struggles have led to intractable disputes. One interesting case was being litigated by a prominent Lagos attorney during the time of my research. Near Ikoro, in the former Ekiti Province, Ondo State, a family was seeking to have several tenant farmers removed from their land. The disputed area was approximately 5,800 acres, on which the tenants had been farming for many years, growing cocoa, palm, and ground crops. Before the promulgation of the Land Use Act, the tenants had stopped paying rent, and the family had sued the tenants for past due *isakole*. Three weeks after the Act was promulgated the court rendered its decision: it ordered the tenants to pay rent, including past charges. It is not clear if the tenants paid rent for a while and stopped again or if they never complied with the court order; however, in 1984 a court again ordered the tenants to pay rent. The tenants paid for a short time and then under legal advice stopped paying again in 1986 or 1987. The family has now filed suit to have the tenants removed from the land. The Lagos attorney representing the family said that he would argue that the tenants must either pay rent or vacate the land because the land was in dispute before the law was passed and therefore the tenants were not protected by the law. His argument is that once one is a tenant, one is always a tenant, regardless of the law. I have been unable to determine the outcome of this case.

During the course of my research I encountered other tenancy disputes that seemed to raise even larger issues than just payment of back-due rent. The purpose of the cases seemed to be to bring public attention to the Act. One person interviewed said that there has been an increase in litigation pertaining to the Act in the last couple of years because "lawyers, landed elite and other people with vested interests were trying to force the government to review and/or rescind the Act." Omotola (personal communication, March 1988) predicted that tenancy disputes would increase and perhaps become more violent in the near future.

Additional criticisms of the law, some of which are contradictory, have been made. These include the following: (1) it makes no provision for productive land use or management, even though many of the criticisms of land use and agriculture leading to the Act's promulgation concerned declining agricultural output; (2) it makes no provision for forestry conservation or tree crop production; (3) it does not provide opportunities for people to use trees as collateral for loans; (4) it does not provide for any system of cadastral surveys and mapping, so there is no way to tell if plots overlap or where they are located in relation to other plots; (5) it "over-controls" land (that is, it is too restrictive and undermines or distorts the land market); (6) it has forced up the prices of rural and urban land; (7) it does not provide for adequate compensation for land compulsorily acquired or confiscated; and (8) it has aggravated many of the problems that it was designed to remedy.

The Future of the Law

From the very beginning the law's existence has been threatened by various groups. While the Obasanjo administration was still in power many political parties indicated to their constituencies that when the military left office the new leaders would repeal the Act. It is likely that the military regime decided to append the Land Use Act to the 1979 Constitution in response to this threat. Another series of attacks on the law have come in the courts. Many of its provisions have been challenged, and contradictory decisions have been frequently rendered.

In 1982 during the civilian administration of Shagari, a bill was finally introduced under pressure from traditional authorities and other influential Nigerians to "review the Act." (See the debate that appeared in *Daily Sketch*, 6 and 7 January 1983, and *Daily Times*, 7 March 1983.) The bill was never debated, however, and was eventually swept away with the coup of December 1983. Criticism has continued to the present, and many have called for repeal of the Act.

In 1986 the government appointed the Political Bureau to investigate the economic, political, and cultural problems facing the country that had led to the fall of the first and second republics (Nigeria 1987a). Unfortunately, very little of its report focused on agricultural problems, and almost no reference was made to the Land Use Act. But it did call for a land reform which would include "the distribution of land to the landless, the abolition of tenancy system on land, freeing tenants from the payment of rents, and making it possible for a farmer to be allocated land if he is willing to cultivate the land." The Bureau noted that a reform would provide land for the landless and greater security of tenure (Nigeria 1987a:55-56). The authors of the report recommended that peasant farmers be able to hold land in freehold, not as de facto tenants, but did not say whether all other farmers should have the same right. The Bureau suggested that every Nigerian, regardless of gender, should have the right to acquire and cultivate land. It proposed that any person who lost land by compulsory government acquisition be compensated, "preferably with alternate land," but did not provide any guidelines for the government to achieve this goal.

The government's white paper responding to the Bureau's report was equally sparse in the area of agriculture and land tenure, but a few of its comments were quite surprising. The white paper agreed with the Bureau's recommendations that land should be made available on a freehold basis to anyone who wanted to cultivate land (see Nigeria 1987b, p. 18), and on the issue of collateral and bank loans it accepted recommendations made by the Bureau. The government also agreed that policies should be established so that peasants could use their land as collateral for bank loans and proposed that the Statutory Rights of Occupancy issued by local government be made acceptable as collateral. Since the white paper was produced there has been little additional official comment.

In August 1989 the government established a panel to review the Land Use Act. Its objectives were to "tackle problems of smooth land administration in the country" and identify solutions; it was also to design ways to facilitate the "smooth takeover of land by the government" (*Newswatch*, 14 May 1990, p. 21). The charge to the panel did not indicate that substantive changes in the law should be contemplated. The findings of the panel have not been made public. *Newswatch* (25 June 1990, p. 28) also reported that the federal government was considering amending the law. First, *Newswatch* reported, the Act would be changed to facilitate federal government acquisition of land by transferring greater power to the federal level. As it stands now, the law stipulates that the federal government can acquire land only through the state governments. Second, "problems associated with the issuance of Certificates of Occupancy would be reduced." The Act would be changed so that once an applicant for a C of O had fulfilled all the conditions, he would be considered to have the C of O three months after his application, even if he had not officially been granted the papers. Third, the Act would be amended to provide "greater security of land tenure," preventing state or local governments from expropriating land indiscriminately without compensation. The amendments would also contain guidelines for fixing ground rents and streamlining land transactions, in addition to increasing the amount of land to which private developers would be allowed access.

This *Newswatch* report makes clear that the state is not going to abandon the Act, and it will not remove the law from the constitution. It is also apparent that most of these proposed amendments deal with urban land tenure problems, or problems that the state or commercial interests have encountered, while ignoring problems relating to rural land tenure and agriculture.

Administration of the Land Use Act

Significant differences exist in application and administration of the law from state to state and among local government areas within states. In addition, the administration of the Act often differs radically from its provisions. These differences often reflect varying interpretations of the law, interpretations most likely affected by administrators' own land use activities.²⁸

Administration in Oyo State. In Oyo State, at the time of my research in 1988, the Land Use Act was administered through the Lands Office, Department of Lands, Housing and Survey, Ministry of Agriculture. The Ministry is located in Ibadan, the capital of the state. All applications for certificates or other requests regarding land (mortgages, surveys, and the like) were processed through the Lands Office at the Ministry.

The land officers in Ibadan stated that they issue a Certificate of Statutory Right of Occupancy, which combines the terms and concepts of a Certificate of Occupancy and a Statutory Right of Occupancy. Yet this term (Certificate of Statutory Right of Occupancy) does not appear in the Act. It also differs from the terms used on the application forms and from the terms used by some land lawyers (Myers 1990, pp. 211-13). These inconsistencies add ambiguity to the implementation and administration of the Act.

The Oyo State government grants only Certificates of Statutory Right of Occupancy. Anyone interested in registering and receiving a certificate, whether for residential urban land or rural agricultural land, must apply for a Certificate of Statutory Right of Occupancy. The usual application process for registration of rural agricultural land in Oyo State requires many steps and may take up to several years (Myers 1990, pp. 213-16).²⁹ The Lands Office assumes that the applicant already has control over or access to the land in question. The office does not make new grants of agricultural land. An individual may apply for an actual grant of land only if he is trying to acquire residential space in one of the elite urban Government Reserve Areas.

Many of the administrators at the Lands Office are aware of problems concerning the law, particularly the contradictions between intent, provisions, and implementation at the local level. For example, despite provisions of the Act suggesting that an applicant may apply for agricultural land from the state (that is, the local government), many said that this was not possible.

Government officials leave the acquisition process to the applicant. State administrators and farmers are well aware that customary rules continue to define land acquisition and use. This clearly demonstrates an awareness on the part of both the state and peasants of the government's limited capacity to implement or enforce certain provisions of the Act. Commercial farmers in Oyo State are obliged to contact local authorities and farmers if they wish to acquire land for farming purposes. Moreover, despite the Act, a land market continues to thrive. People in both urban and rural areas buy, sell, and lease land. It is also possible to hire a land agent to facilitate the purchase of residential or agricultural land. The Lands Office usually comes into the picture when the buyer wishes to have his land surveyed and registered (that is, to acquire a Certificate of Occupancy). The state intervenes and invokes provisions of the law to acquire land only in cases where very large commercial agribusinesses or development projects require land, and even in those cases farmers or rural landholders have a great degree of control over the process of acquisition and compensation.³⁰

Data gathered at the Lands Office revealed the number and types of land transactions approved in the period from March 1978 to April 1988. These data are presented in table 3.1. It also demonstrates that the majority of land transactions approved by the Lands Office between 1984 and 1986 were for other procedures than for Certificates of Occupancy. Graph 3.1 illustrates the relationship between C of Os and other land transactions. The percentage of land applications that were for Certificates of Occupancy jumped from 32 percent in 1986 to 71 percent in 1987. Table 3.1 shows that most of the C of Os issued in Oyo State (10,346 or 85 percent) were for Ibadan Province, while only 1,864 (or 15 percent) of the total were issued in Oyo Province. This is illustrated in graph 3.2.

Approximately 95 percent of the C of Os applied for and issued were for residential land in urban areas. This demonstrates the greater exploitation of the Act in urban areas, particularly commercial urban areas, versus the countryside. The vast majority of the C of Os issued in Oyo State are for residential land in the city of Ibadan. One land officer said that many of the C of Os issued for agricultural land are misleading, and that people often register land as agricultural when in fact they intend to use it for commercial or industrial purposes. They do this to secure a lower ground rent. Thus, even the very few number of cases of registered agricultural land may overstate the case.

Another criticism of the administration of the Act has been that high-ranking officials (including many charged with administration of the law) have confiscated the choicest parcels of land in urban and rural areas and distributed them among themselves and their families. The same parcels have often been reconfiscated and redistributed by each succeeding government. Land has indeed become an item of state patronage (see Omotola 1988; Nnamani 1989; Yahya 1987; Udo 1985). It is likely that since this abuse is common knowledge, many landholders avoid registration so as not to bring attention to themselves or their land.

A third area of criticism relates to what Nnamani (1989) refers to as the government's zeal to generate revenue. Rather than attempting to live up to the "lofty goals" of the Act, many states have used the law as a means to generate income. High land rents and application fees (including extraordinary costs) put registration beyond the reach of most rural landholders. And finally, Famoriyo (1985) has noted that no cadastral maps or surveys have been generated to show which land is occupied and which is vacant; his verdict is that "[i]t is impossible to administer something that is undefined" (p. 18).

Administration in Iwo Local Government Area. It is unclear whether Oyo State ever granted Customary Rights of Occupancy. This is a point on which administration differs from state to state. Staff at the Ministry reported that local governments in Oyo State could grant Customary Rights of Occupancy, "but they never do because banks will not accept them." Shortly after the Act was promulgated the local governments tried to issue Customary Rights of Occupancy in rural areas. However, "administrative difficulties arose." The function was centralized and brought to the department in Ibadan.

TABLE 3.1
Certificates of Occupancy Issued by Year, as a Percentage of Total
Land Transactions in Oyo State and by Province: 1978-1988

<u>Year</u>	<u>Total Number of Transactions¹</u>	<u>Total Number of Certificates of Occupancy</u>	<u>Certificates of Occupancy as a Percentage of Total Transactions</u>	<u>C of Os Ibadan Province²</u>	<u>C of Os Oyo Province³</u>
1978		117		7	110 ⁴
1979		308		198	110 ⁴
1980		986		876	110 ⁴
1981		2035		1925	110 ⁴
1982		2386		2276	110 ⁴
1983		1079		860	219
1984	1918	858	45	693	165
1985	2012	754	37	592	162
1986	3193	1022	32	828	194
1987	3330	2369	71	2029	340
1988		386		152	234
TOTAL		<u>12300</u>		<u>10436</u>	<u>1864</u>

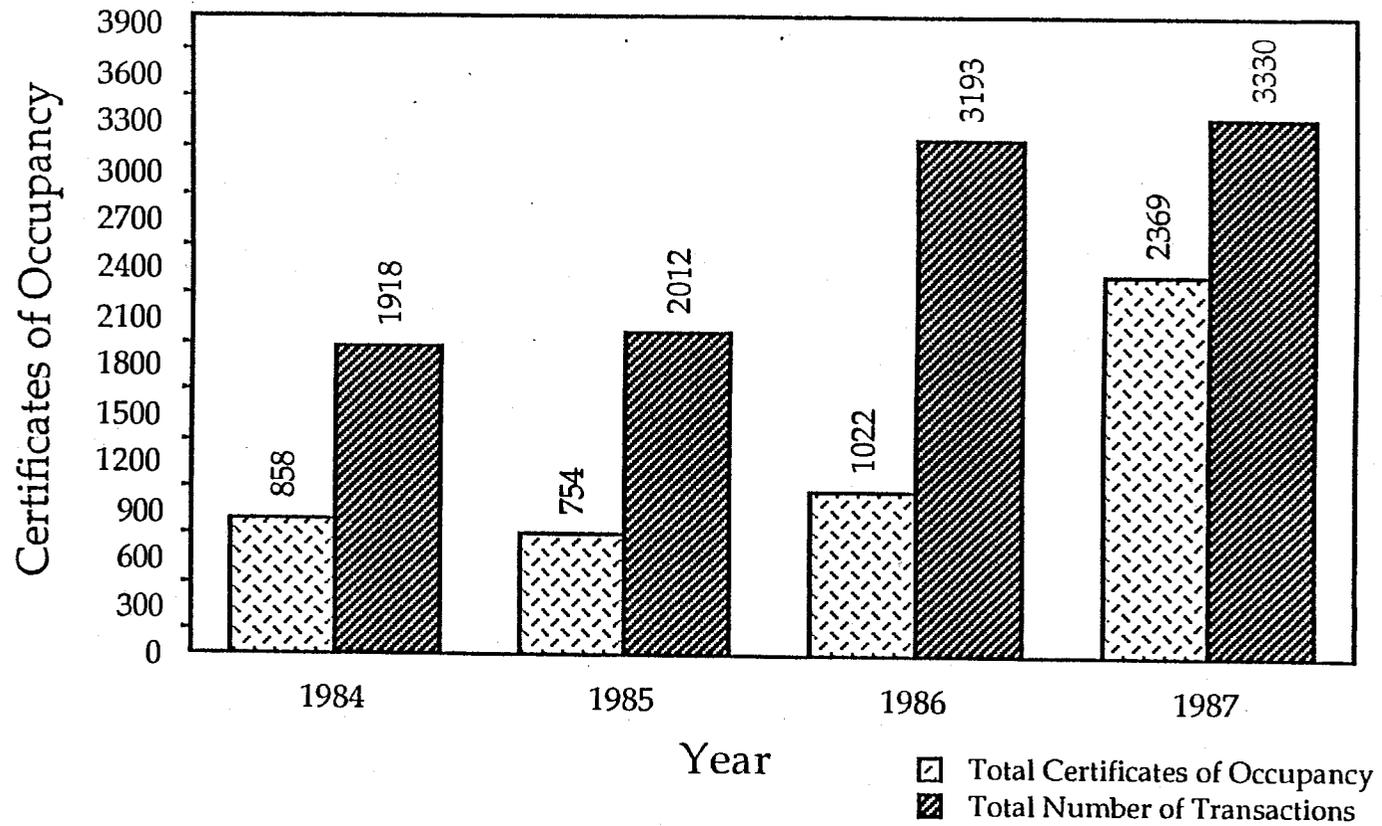
1. In this analysis I have looked at the total number of transactions for the years 1984-1987 only. In the second survey of the land records (see Methods, Chapter One) I focused on these years. In the first survey of the records the data available for the years 1978 to 1983 was incomplete (see endnote 5, Chapter One). Transactions in the "Day Book" included approved applications for the following: (1) Certificates of Occupancy; (2) Mortgages; (3) Stamp-Up (an application for an increase in Mortgage); (4) Release (record that a loan has been paid, "release of charge"); (5) Assignment (assignment to someone else, "selling one's interest"); (6) Sublease; (7) Gift.

2. Ibadan Province includes: Ibadan City (and environs), Ibarapa, and Oshon Division (Oshogbo, Oyan, Igbo, Ogbomosho, Irael, Ikere, Iwo, Bagun, Ifon, Ede, Ikilu, Ejigbo and Ila).

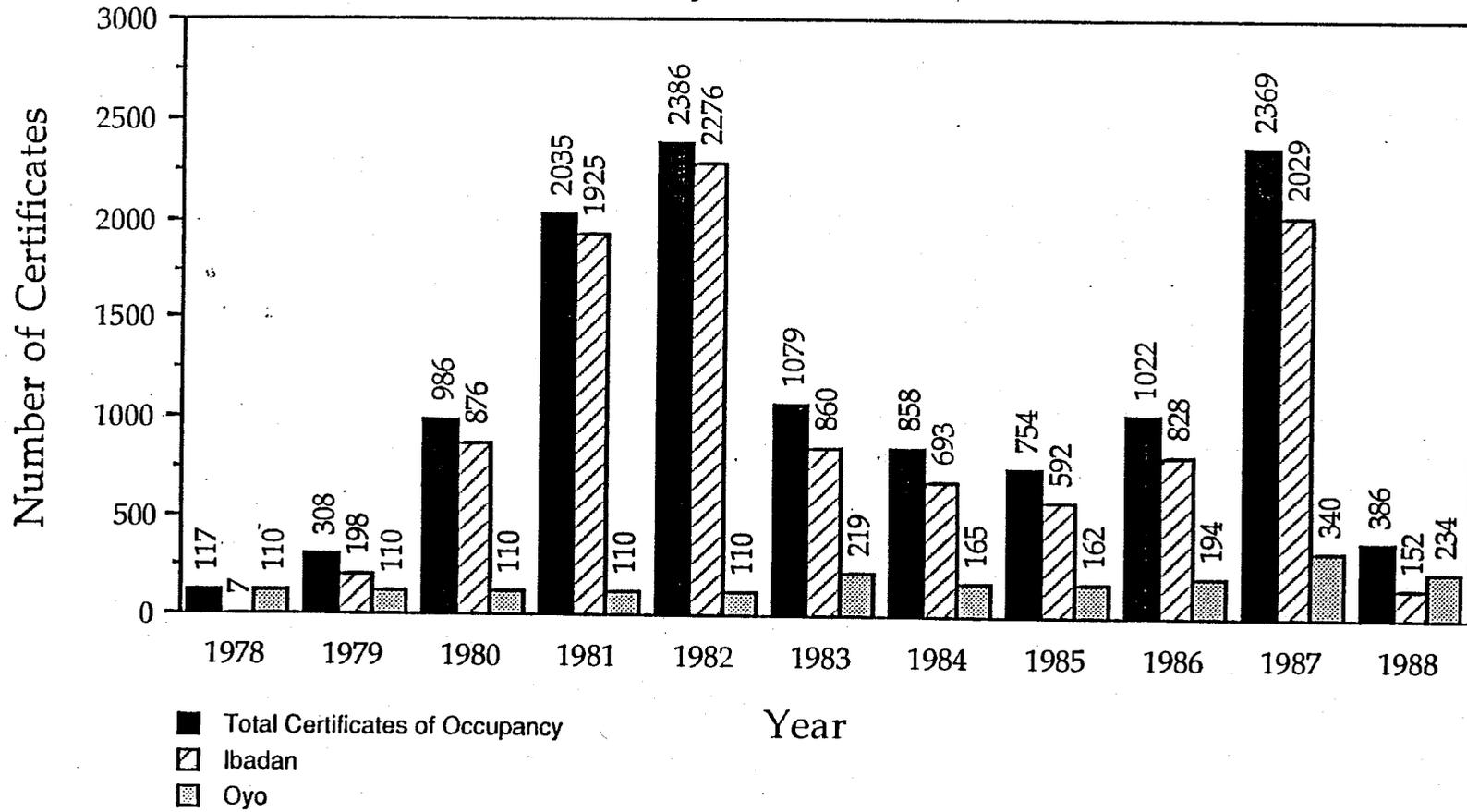
3. Oyo Province includes: Oyo Town, Ife, Ilesha District (Ibokun, Ijeda, Ijebujsa, Esa Odo, Esa Oke and Iperindo) and Oyo North (Iseyin, Shaki, Kise, Ilero, Igboho, Ilo and Okeho).

4. One of the Land Officers had kept separate tallies of Certificates of Occupancy by Province; however he combined the years 1978-1982 for Oyo Province. I have divided this total by five and recorded 110 transactions for each of these years.

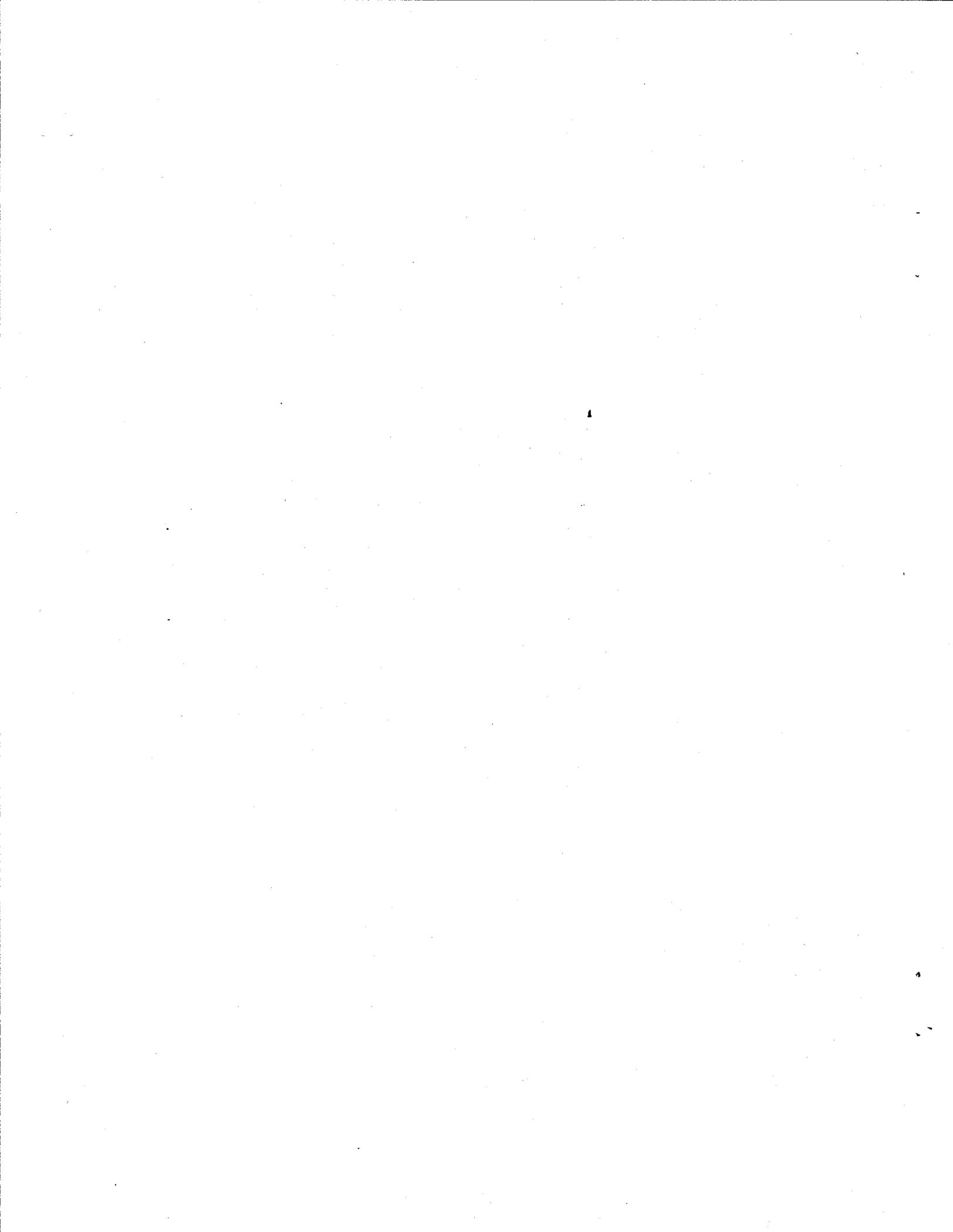
GRAPH 3.1
Total Certificates of Occupancy Issued
in Relation to Total Number of Land Transactions
Oyo State: 1984-1987



GRAPH 3.2
Certificates of Occupancy by Province
Oyo State: 1978-1988



Of the approximately 15,000 land records reviewed at the Lands Office, only 113 Certificates of Occupancy were issued to individuals in Iwo Town. None of these C of Os applied to rural or agricultural land; 7 were for industrial or commercial land, and the balance were for residential land. Although there have been very few cases of agricultural land registered in Oyo State, it would be misleading to suggest that the Land Use Act has had no impact or that it is a "dead letter." The impact of the Act in Oyo State will be discussed more fully in the next two sections.



4. PEASANT FARMERS AND THE LAND USE ACT IN SOUTHWEST NIGERIA

Opportunities, Constraints, Exploitation, Resistance, and Transformation

Sections four and five of this study focus on how farmers in southwest Nigeria have responded to the opportunities and constraints created by the nexus of the Land Use Act and changing socioeconomic conditions. I discuss the ways men and women "peasant farmers"³¹ in three villages in Iwo Local Government Area (LGA) and "commercial farmers" in southwest Nigeria (with and without registered land) have reacted to and taken advantage of the new legal and socioeconomic contexts. Their responses have affected land tenure arrangements, local-level processes, and agricultural performance in southwest Nigeria.

Both peasant and commercial farmers have attempted to expand farming operations in the last few years (see also Guyer 1988; and personal communication, 1988), though for different reasons. In general it appears that as a result of the impact of the oil boom and bust and the Structural Adjustment Program (SAP), more commercial farmers are entering the market to capitalize on the rise in prices for agricultural produce, while many peasant farmers have attempted to compensate for increased costs of goods and services by increasing the area cultivated. However, some of the farmers in the three villages have actually decreased the area they cultivate because of increased costs.

The impact of changing economic conditions on agricultural production has been uneven. Some middle-class urban families (who otherwise would not be considered commercial farmers) rent land, hire labor, and invest income from other sources, much like the commercial farmers. But they are doing this to supplement household income that has deteriorated as a result of SAP. Similarly, a few peasant farmers in the three villages and the surrounding area have expanded production in an attempt to capitalize on higher agricultural prices. However, these latter farmers are the exception and not the rule. An important point is that because of SAP, many more people from all social classes are farming (see also Guyer 1988), although it is apparent that not everyone has been able to expand his or her area of cultivation, and that those who are expanding production are not all doing so for the same reasons.

Although the Act has officially reduced all rights of ownership to rights of tenancy, the terms "landowner," "landholder," and "land tenant" are still generally appropriate when discussing land tenure relations among peasant, and to some extent commercial, farmers in southwest Nigeria. In this discussion I use the term "rights-holder" to refer to peasant "landowners" and the term "tenant" to refer to one who has secondary rights that are granted by the rights-holder. The categories of rights-holder and tenant are not mutually exclusive.

Many farmers in the three villages hold their own land but also rent parcels of land, and so are both rights-holders and land tenants.

Peasant Farmers and the Land Use Act in Iwo Local Government Area

Socioeconomic Characteristics of Oluborode, Oosa, and Baase Villages

The villages of Oluborode, Oosa, and Baase are approximately 24 kilometers from the center of Iwo Town (see maps 1.3 and 1.3a, pp. 7-8). They are located along the Gbongan-Ife road a short distance from the Oshun River. Each village has its own boundaries, with its farmland contained within these boundaries, but the farmland does not necessarily form a block or circle around the settlement. Today few farmers have blocks of land. Most have parcels scattered throughout the territory belonging to the village, and some have rights to parcels in other villages. Map 1.3a illustrates the position of the three villages in relation to one another, the Gbongan-Ife road, and the Oshun River.

These villages became prosperous during the early part of this century as a result of the cocoa boom. Many of the farmers in these villages once had large numbers of cocoa trees, which produced their primary crop. As a result of economic pressures, falling cocoa prices, and rising costs of labor and insecticides, the trees have been neglected over the last decade, and most farmers in the three villages have been unable to plant new trees. Most of the large holdings have undergone a substantial reduction in the number of productive trees.

The three villages work together with others in the area on community projects such as clearing and maintaining the bush paths. They also come together on important political issues, particularly if they pertain to land. For example, a few days before I arrived in Baase in March 1988, a man from Iwo came to buy or lease 6 square miles of land for commercial farming. The *bale* of Baase called for representatives from Oosa and Oluborode to meet to discuss the issue. (They decided to refuse the request because no one knew the man; he did not have references or relatives in any of the communities, and he wanted too much land.)

At the time of my research there were approximately twenty-five Muslim, Yoruba families in Oluborode, thirty in Oosa, and thirty-two in Baase. Most of the men in these villages reported that they had two wives, though some noted estrangement from one wife. The total number of children reported by each farmer ranged between three and twelve. Most families have only three or four of their younger children living with them in the village, but most farmers also have additional dependents attached to the household for whom they are responsible. The population of each of these villages has been steadily declining for at least the last ten years.

There is one Ibo family living and farming in Baase village, and several Igede and Igala men from Benue State farm and work in the three villages. The Igede and Igala live

in Iwo Town. While I was in Oluborode there was also a small group of Fulani herders living and grazing cattle on Oluborode land.³²

The total population of the three villages at the time of my research was approximately 450 men, women, and children. This figure does not include the majority of the children who do not live in the village, some of whom maintain economic relationships with the village. Nor does it include the Igede, Igala, Fulani, non-Yoruba farm labor, or any other Yoruba who may hire people to farm family land but who do not live in the village. It also excludes family members who do not live in the village but who send money to the village to invest in a "personal plot."

In all three villages there is a conspicuous absence of men and women in their prime productive years, from late teens to late forties. The youngest male farmer in the three villages was in his early forties, and all the others were over fifty; some were over seventy. There are many small children in the villages, ranging in age from one or two to ten years old. Older children live in Iwo or elsewhere with relatives and attend school or are apprenticed as auto mechanics, tailors, clerks, and so forth. Some of these children return to the villages during planting and harvesting periods, but most do not. Most of the women were between fifty and sixty-five years old. All the Yoruba men interviewed stated that they had been born in their respective villages, and all but one said that they had lived there all their lives. All of their wives came from surrounding villages and from different lineages and families.

Agriculture is the primary occupation, but many of the men in these villages had secondary jobs that provided supplementary income. In a few cases the secondary job provided a greater income than farming, although most men considered themselves full-time farmers (see also Fabiyi 1985).³³ Similarly, the women in the three villages reported having several occupations (aside from helping their husbands farm, domestic chores, and child-rearing), including farming on their own parcels, trading, palm oil processing, and goat tending. A few women also had inherited palm trees or cocoa farms. In addition, some worked as middlewomen, buying crops from men or other women and selling them in the market. Most women engaged in many or all of these activities, though the time spent on each occupation varied from one woman to another.

Although the city center is 24 kilometers away, inhabitants of the villages do not need to rely on Iwo Town for all their consumer requirements. There is a five-day market³⁴ approximately 5 kilometers from Baase near the train junction (maps 1.3 and 1.3a). Villagers may sell agricultural goods or processed items and purchase foods and some other consumer items at this market. Since the roads between the villages are only bush paths, most farm produce that is to be sold is carried or head-loaded to the main Gbongan-Ife road. The farmers who can afford transportation take their goods to Iwo Town; those who cannot take their goods to the five-day market at the train junction or sell their produce to middlemen. Both men and women now face more problems in transporting goods to market than they did

ten years ago. Most farmers in the villages cannot afford transport costs to send their goods to market.

People who leave the villages and take up urban jobs retain contact with the village. If they move to Iwo Town they often see their relatives on weekends--either the relatives travel to town or the urban-based travel to the farm. Investment and cash flow in both directions, depending largely on the wealth of the farmers at the village. Some urban sons send money to the village to invest in agriculture or for consumption, while some farmers invest in a son's or daughter's professional development. In either case, as Berry (1985) highlighted, there is a strong push to broaden both productive and unproductive social relationships.

It is quite apparent that the quality of life decreased in the eight-year period between my two stays in the area in 1980 and 1988. For example, people had fewer meals a day in 1988, and both the quantity and quality of food were less than in 1980. In 1988 farmers were eating more cassava and less yam, meat, or poultry. Families had less money for health care and festivals, including weddings, births, and funerals. Fewer of the young children were attending school, and more of the older ones were being apprenticed in town.

Farming Operations in the Three Villages

The farmland in the villages is managed using a bush-fallow rotation system. After burning and clearing, most farmers cultivate a parcel for three to five years, then let it lie fallow for an equal period of time. The average farm size (total land cultivated) in the villages is about 5 acres, an estimate that corresponds to the findings of research elsewhere in southwest Nigeria (Atteh 1985; Federal Office of Statistics 1987; Vanden Driesen 1972; Berry 1987; Famoriyo 1987; Fabiyi 1974). Farmers also lease and/or lend land to each other or to farmers from other villages; there are a great many land transactions.

The main arable crops are yam, cassava, and maize. Secondary crops include guinea corn, cocoyam, tomatoes, pepper, and groundnuts. Tree crops include bananas, oranges, pawpaw (papaya), cocoa, kolanut, and palm oil. Various tree varieties, particularly orange, pawpaw, and kolanut, are usually planted in the same parcels that are used to grow subsistence crops. Any of the crops might be considered a cash crop, although income for most farmers is now derived mostly from the primary crops and tree crops (excluding cocoa). Both men and women grow the primary crops, but vegetables, with the exception of tomatoes, are grown mostly by women.

Both men and women farm, but they do not necessarily perform the same tasks. Men generally perform "heavier" tasks--they clear the land by stumping and burning bush, "make heaps," and plant crops. Men also weed and harvest their crops. On men's farms, certain crops such as tubers and tree crops are harvested only by men. Men also make decisions regarding the timing and method of performing most agricultural tasks.

Women perform what are considered "lighter" farm tasks on their husbands' farms. Women use hand plows, plant crops, weed, and harvest. Women do all tasks on their individual parcels, unless they can afford to hire labor. Recent studies (Spiro 1987; WIN Document 1985; Adeyemo 1984; and Olawoye 1985) have demonstrated that women's farm-related tasks also include transporting crops from farm to home or market and processing the crops.

Trading has historically been viewed as the major occupation of Yoruba women. Indeed, most studies indicate that at least 60 percent of the adult women in any village work as traders (Spiro 1987; see also Olawoye 1985; Osuntogun 1982; and Adeyemo 1984). However, recent studies have shown that Yoruba women spend more time on farm-related activities than they do on trading.³⁵ Women have begun to farm in larger numbers in the last ten years. That is, more women have started farming their own parcels (that is, parcels to which they have use rights) in addition to the tasks they perform on their husbands' parcels (Guyer 1988; Osuntogun 1982; WIN Document 1985; Okuneye 1988; see also Myers 1990, pp. 266-70). Almost all of the women interviewed in the three villages reported either that they were farming their own parcels or that they had increased the amount of time spent helping on their husbands' parcels. Many of these women noted that they had just recently (within the last couple of years) begun to farm their own parcels. Many said that they did this because they were having trouble feeding themselves and their children.

The reasons for the increase in women's farming activities are varied. Guyer believes that there is a relationship between increased farming by women on their own parcels and the price of cassava.³⁶ Olawoye (1985, p. 9) stated that the number of women farming their own parcels has increased because there is a "lack of alternative economic opportunities." I posit that the major reason why more women are farming now has to do with the impact of the Structural Adjustment Program. Recent increases in prices of goods and services (such as health care and schooling) have pushed more women into farming (see Zdunnek 1987).

Unfortunately, although many more people of all classes and categories are farming now (Guyer 1988), many of these people, including women, have recently reduced the area of land cultivated due to increased costs brought on by the Structural Adjustment Program.³⁷ Many women and men farmers in Iwo LGA stated that they had been forced to cut back the area of cultivation because of the increased costs or unavailability of labor and other inputs. But this process, like so many others at the local level, has been an uneven one. A few of the farmers in the villages have been able to capitalize on increased farm prices.³⁸ In this process it is important to note that while more women are farming, they continue to face the same cultural and economic barriers to acquiring land that they have always encountered.³⁹

Tenure Arrangements in Oluborode, Oosa, and Baase Villages

In this section I discuss tenure arrangements of the men farmers in the three villages and note how they are changing over time. These characteristics are highly suggestive of the

differences in socioeconomic status among the farmers, which are crucial in determining how different peasant farmers are exploiting the Land Use Act.

In gathering data about tenure arrangements, I collected information about the number of parcels and the area of each parcel held or used by each farmer interviewed. A farmer has parcels of varying sizes and shapes, but they are not necessarily contiguous. I also asked farmers to identify each parcel as family or individual land and to tell me if they had tree crops on each parcel. Two indicators, number of parcels and parcel size, helped me to gauge each farmer's relative wealth and to investigate possible relationships between the parcel characteristics and the farmer's response to the Act.

It was not adequate to rely on farmers' own accounts of numbers of parcels, for they tended to tell me only about the parcels that they were currently cultivating. I often discovered that men farmers actually had a greater number of parcels than they stated during our interviews. These additional parcels were usually land in fallow, land planted with vegetables, or family land "too far from the village to work." Some farmers intentionally overstated the number of parcels in their possession, while others understated the number. The mode reported by men farmers, excluding the *alejo* (stranger farmers), was three parcels under cultivation, though the range was from one to six parcels. In table 4.1, I list all the parcels I determined that each farmer had access to, regardless of the farmer's own accounting.

The number of parcels a farmer reported holding is a limited indicator of wealth or socioeconomic position for a number of reasons (Myers 1990, pp. 276-78). The size of men's parcels varied greatly and this too was only a limited indicator (*ibid.*). I did not measure parcels in the villages but rather took the farmers' assessments as accurate. The men interviewed reported parcels under cultivation (including those planted with tree crops) that ranged in area from .75 to 25 acres. The total area under cultivation for each farmer ranged from 4 to 43 acres. These figures are consistent with the findings of other research conducted in the southwest (Vanden Driesen 1972; Fabiyi 1974; Francis 1986; Famoriyo, Fabiyi, and Gandonu 1977).

As table 4.1 indicates, most of the farmers interviewed inherited their parcels. This was typical of all three villages. The table also contains information pertaining to rental arrangements. Six of the fourteen farmers reported that they rented land in, while three of the fourteen reported that they rented land out. These figures may actually understate the number of people who rent in or rent out land, because farmers did not always identify parcels as rented in or report parcels rented out.

TABLE 4.1
Men Peasant Farmers: Number of Parcels Cultivated, Parcel Size,
Method of Acquisition and Other Characteristics

<u>Farmer#</u>	<u>Village</u>	<u># of Parcel</u>	<u>Parcel Size</u>	<u>Method of Acquisition</u> ¹	<u>Trees</u> ² (y/n)	<u>Rents Out Land</u> ³ (y/n)
One	Olub. ⁴	1	5 AC ⁵	Inherited	Y	N?
		2	10 AC	Inherited	Y	
		3	3 AC	Inherited	Y	
		4	25 AC	Rental	Y	
Two	Olub.	1	2 AC	Inherited	Y	Y
		2	2 AC	Inherited	Y	
		3	? AC	Inherited	Y	
		4	? AC	Inherited	Y	
		5	? AC	Inherited	Y	
		6	.75 AC*	Rental	N	
Three	Baase	1	1 AC	Inherited	Y	Y
		2	2 AC	Inherited	Y	
		3	1 AC	Inherited	N	
Four (Ibo)	Baase	4	3 AC*	Rental	Y	N
Five	Baase	1	1.5 AC	Inherited	Y	N
		2	2 AC	Inherited	Y	
		3	3 AC	Inherited	Y	
		4?	10 AC	Inherited	Y	
Six	Olub.	1	2 AC*	Rental	?	N
		2	1.5 AC*	Rental	?	
		3	1 AC*	Inherited	Y	
Seven	Olub.	3	10 AC	Inherited	Y	N
		4	5 AC	Inherited	Y	
Eight (Iegde)	Olub.	1	1 AC*	Rental	N	N
		2	.20 AC*	Rental	?	
		3	.10 AC*	Rental	?	

Men Peasant Farmers: Number of Parcels, Parcel Size, Method of Acquisition and Other Characteristics

<u>Farmer#</u>	<u>Village</u>	<u># of Parcel</u>	<u>Parcel Size</u>	<u>Method of Acquisition</u>	<u>Trees (y/n)</u>	<u>Rents Out Land (y/n)</u>
Nine	Olub.	1	5 AC	Inherited	Y	N
		2	5 AC	Inherited	?	
		3	5 AC	Inherited	Y	
		4	15 AC	Inherited	Y	
Ten	Oosa	1	3 AC*	Inherited	Y	N
		2	1 AC*	Inherited	N	
		3	.75 AC*	Inherited	N	
		4	.60 AC*	Inherited	Y	
Eleven	Oosa	1	6 AC	Inherited	Y	N
		2	6 AC	Inherited	Y	
		3	2 AC	Inherited	?	
		4	? AC	Inherited	?	
Twelve	Oosa	3	5 AC	Inherited	Y	Y
Thirteen	Oosa	3	6 AC	Inherited	Y	N
Fourteen	Baase	3	5 AC	Inherited	Y	N
Fifteen (Fulani)	Olub.	1	15 AC	Borrowed (Free Use)	N ⁶	N

1. Method of acquisition: Inherited parcels can be either family or individual land.

2. Trees: "Yes" indicates the farmer reported having either cocoa or palm trees.

3. Rents out land: "Yes" indicates that the farmer reported having land that he rents out. The parcels rented out were not included in the total number of parcels reported in this table.

4. Olub.: Oluborode.

5. AC: Acres.

6. Trees on the land but not allowed to harvest.

* Parcels were reported in heaps. They were converted to acres on the basis of information provided by the Land Officer, Otukpo Local Government Area, Benue State (approximately 5000 heaps to 1 hectare, 2000 heaps to 1 acre). Since farmers pay laborers by the heap, estimates of area given in heaps may be more accurate than estimates given in acres.

Family and Individual Land

Peasant farmers in these villages, as elsewhere in southwest Nigeria, distinguish between "family" and "individual" land; that is, a peasant farmer will say "this parcel is familyland and that parcel is my personal land." However, few of the farmers studied were willing to specify if a parcel was individual or family land.⁴⁰ I believe that they did this because in many cases they themselves may not have been sure of the current status of the land.⁴¹

Farmers describe family land by saying that it is usually inherited as a whole unit (though all of the land may not be contiguous), and that the eldest children of the deceased assign use rights for parcels to various family members. Borders within family land are relatively fluid and may shift from year to year depending on fallow and cultivation patterns. In some cases assigned parcels become like individual or personal parcels over time because no siblings or progeny are present or come forward to demand access and use.

The parcels that farmers identify as individual plots or farms were inherited directly from their fathers. A farmer may say either that his father gave him this parcel when he died or that his father's land was divided up upon his death and this parcel was given to him. Farmers noted that the borders are more clearly demarcated and that they have greater control over the use of, and income derived from, their individual land. In some cases the land that was identified as individual was rented land. Although the peasant farmers could not plant trees on these parcels (although they might harvest trees as part of the arrangement), most seemed to feel very secure about their control over these parcels and their right to reap the rewards of their investments.

There appear to be different degrees of "familiness" and "individualness." That is, some land identified as family land may actually be controlled by one or more individuals, while land identified as individual may actually be subject to some kind of family authority. Nevertheless, the fact that farmers distinguish between family and individual or personal land is significant because some farmers report feeling more secure in their control over personal land. This has clearly affected investment decisions, such as whether to plant trees. For example, some of the farmers in Oluborode plan to plant cocoa trees on their personal plots rather than on family land, because other family members might claim part of the produce of trees on family land. In the recent past, when farmers in these villages have had resources to invest in new cocoa trees, they have tended to plant them on their personal parcels and use their family parcels for subsistence and cash crops.⁴²

Land tenure institutions in southwest Nigeria are evolving largely in response to changing socioeconomic conditions. For example, as the village populations continue to age due to changing economic conditions and opportunities, older farmers are acquiring greater control over land. They acquire greater control because there are fewer siblings or offspring present to demand access and use. This greater control is exhibited in different ways. Although custom says that all offspring are entitled to a portion of their father's land, this

does not always occur. Some farmers in Oluborode stated that there is enough land for everyone who might want to return to the village. They implied that they would provide space on either family land or individual land. However, other farmers commented that there was not enough good land available and that returning relatives would have to rent land or accept less productive family land. Thus, some villagers seemed able to prevent other family members from using family land. This signifies important changes in land tenure relations, particularly the continuing movement of the tenure system toward individualized rights and control.

Men Peasant Farmers and the Land Use Act

All of the men farmers I interviewed, and those with whom I spoke informally during the course of my research, knew of, or had heard about, the Land Use Act. Many people had erroneous impressions or knowledge about the Act. Most did not know what a Certificate of Occupancy was, nor were they aware of the registration process, or even where they would go to register land. None of the farmers in the three villages nor any other peasant farmers in Iwo Local Government Area has registered any land, family or individual. Only a few of the farmers in the three villages had heard of the Land Advisory and Allocation Committee, and that was due to an ongoing dispute they had with several local commercial farmers. All of the farmers stated that they would not go to the Committee for any reason, including registration, land acquisition, or land disputes. One farmer summed up the feelings of several others when he asked, "Why would I go to the Committee? They do not own the land." All the farmers stated that if they needed more land they could acquire it through local sources, using "traditional" methods. That is, either they would ask family members for more land or they would rent land from people they knew. I found that the village elders (particularly the *bales*) and the more successful peasant farmers were better acquainted with the Act than were other farmers in the village. This may be because these individuals had the most to gain or lose as a result of the Act.

In general, the farmers had two (possibly contradictory) positions regarding the Act. First, most stated that the Act did not apply to them or their land. And second, most viewed it as a potential threat; many said that they would resist any attempt by the government to impose the Act on them. Even after I had explained what was meant by registration, all the farmers in the case study and most others to whom I spoke stated that there was no need for them to register their land. They held this position with regard to all their parcels, regardless of the type of crops grown (subsistence or cash crops), the method of acquisition, or the status of the land as individual or family. They stated that they felt secure vis-à-vis the state and other farmers in their control over both their own parcels and the parcels they rented.

The fact that the government is legally entitled to take land did not seem to concern many farmers; many farmers stated that they felt confident of their ability to resist government acquisition. I was frequently told that if anyone from the government or from

private enterprise tried to take the farmers' land they would gather together and drive the person away. One farmer said, "The government cannot take the land that I eat from."

The fact that no farmer has registered or attempted to register his land does not imply that the Act has had no impact or that people have not tried to capitalize on certain aspects of it. The impact of the Act has been diffuse, and it has affected people in ways that its designers had not anticipated. The impacts of the Act at the local level include the following: (1) changes in tenancy arrangements, which may lead to tenure insecurity; and (2) new opportunities for elites, both civilian and military, to "take" land from local farmers. Both of these impacts have stimulated subtle changes in the land tenure system, as well as changes in socioeconomic relations within the villages.

Men Farmers, Tenancy, and the Land Use Act

One of the most interesting and potentially important impacts of the Land Use Act in Iwo Local Government Area is the effect it has had on tenancy arrangements between individuals and communities.

A common tenure practice among the Yoruba is the lease of land to strangers (either nonkin Yoruba or non-Yoruba). As noted earlier, the tenant pays a fee to gain access to the land and then pays a yearly "rent." In the past this rent was nominal, often in kind rather than in cash and its purpose was to remind the tenant that the property was not his. The payment of this rent, known as *isakole*, was sufficient proof of ownership in any land dispute. With the commercialization of cocoa, land tenure and tenancy relationships were transformed (but not completely changed), contributing to the commercialization and individualization of land rights (see Berry 1975, 1985). Over time *isakole* became more commodified, a rent rather than a tribute.

In the study area there were many of the more "traditional" *isakole* relationships as well as many that were commodified. Some landowners looked upon their tenancy arrangements as a source of income, not as tributary relationships. The *isakole* rates varied greatly, depending on the type of crops grown, the presence of tree crops, and the amount of land. Rates ranged from 5 to 25 naira per acre, not including required payment of produce.

The Land Use Act has played a role in the transformation of land rights, tenancy, and *isakole*. As noted earlier, Francis (1981, 1984) argued that the Act did not introduce "an economic rationalization of tenancy," but rather that it did the opposite. He said that the Act made *isakole* relationships much more political, straining relationships between landowners and tenants.

The Act has provided opportunities which have been seized by some, but not all, peasant farmers. I suggest that there is a relationship between success in manipulating the

Act to one's advantage and one's economic position within the community. Those with economic power more frequently renegotiate tenancy relationships to their advantage. The process is dynamic--farmers who have the economic power to do so frequently attempt to renegotiate these arrangements, while their counterparts (that is, tenants or landlords) struggle to resist these attempts. Further, one's rising or falling economic fortune appears to animate this process. When farmers feel threatened by deteriorating economic conditions (increasing costs in goods and services, poor labor availability, poor prices, state interference, and so forth) or if they feel powerful enough to capitalize on these changing conditions, they may attempt to renegotiate their *isakole* relationships.

It is also apparent that farmers see no contradiction in using the "mystique" of the Act to influence renters or landlords in conflicting ways.⁴³ Farmers of all socioeconomic strata have attempted to invoke it to lend weight to their positions. Some have tried to convince their landlords that they no longer have to pay rent because of the Act, while others have tried to convince those renting from them that the Act does not apply to their particular arrangement. The farmers see no contradiction between these actions or between these actions and their belief that the Act does not apply to them when it comes to the government owning their land.

Those peasant farmers with economic power were in a much better position to influence their *isakole* relations, and some of them have done so successfully. Those farmers who were wealthier were usually traders or large landowners, and as such they had the power to influence the behavior and actions of others. Several cases of peasant farmers from the villages provide evidence to support this hypothesis.

Farmer #3 (see table 4.1, p. 43) is the *bale* of Baase. He has a prestigious political position and is one of the wealthier farmers in the three villages. He rents land to Yoruba and to an Ibo man (farmer #4). He has increased the rent over the years. Many years ago he charged 3 naira per acre; in 1985 he raised the rent to 5 naira, and in 1988 he was charging 10 naira per acre plus an annual dash of palm oil. He says that he raised the rates because of inflation and that if the tenants stopped paying he would throw them off the land.

Farmer #1 is probably the wealthiest farmer in Oluborode and perhaps in the three villages. He holds no formal political position but is considered an elder. He has large tracts of land, on which he grows cocoa, other tree crops, and field crops. He is the only man in Oluborode with a motorcycle. Much of his income is earned from trading in crops as a middleman. He has renegotiated his rental arrangements for approximately 25 acres with the man he rents from. He claims that before 1978 he used to pay 10 naira rent plus a preagreed amount of palm oil. After 1978 he refused to pay rent, citing the Land Use Act, but he continues to dash the owner palm oil because there are palm trees on the land and the Act does not cover trees, and because he wants to "maintain good relations." The landlord has accepted the new arrangement. In this case I believe that this farmer's wealth empowered him to discontinue paying cash rent; however, it was not great enough to permit him to end his annual dash of palm oil for the trees on the land.

Political position alone does not seem to be sufficient to change or maintain *isakole* relationships; in fact it may be a hindrance because the political figures feel obligated to "uphold the law." For example, the *bale* of Oluborode, who was not wealthy but had a prestigious position, has not changed any of his tenancy relationships, although he would like to charge his tenants more and pay less to the owner of the land he rents. He could not raise his rent, he said, or stop paying rent because he felt compelled to set an example for the rest of the village.

Other farmers, not included in the case study, have used, or tried to use, the mystique of the Act to reduce their *isakole* payments or to change the payments from cash to produce. In the latter case it appears that they were attempting to shift the tenancy relationship back to one of tribute rather than a commodified rental arrangement. At the same time landlords also attempted to assert their control and rights by arguing that the Act did not apply to their arrangements.

Those farmers without the economic power to alter tenancy arrangements say they continue to pay *isakole* because they want to "maintain good relations." For example, farmer #2⁴⁴ said that he had not altered his *isakole* relationships with the woman from whom he rents or with the man to whom he rents land. He continues to pay the same rate he has paid for the last ten years to the one and he receives the same amount he has for the last "several" years from the other. He would like to change his relationships by paying less to his landlord and charging more to his tenant because of his increased costs due to inflation and reduced income resulting from poor prices paid by middlemen produce buyers. But he does not or cannot change the rates because "we are dependent on cordial relations." This same farmer stated that he will also accept less (as he has done in the past) if his tenant comes to him and complains of a poor harvest or some other misfortune. He would probably not evict this tenant as long as he continued to pay something.

Farmer #12 from Oosa has no political authority or economic power and has been unable to increase the rate of rent he charges his tenant. Farmer #4 (an Ibo man), also without economic or political influence, was unable to prevent his landlord from increasing his rent. He is aware of other farmers in the area who have cited the Act as a reason for altering their arrangements. His landlord claims that he increased the rate because of inflation rather than as a result of the Act. Those with the least control over their rental rates were the Igede and Igala from Benue State. The Igede farmer (farmer #8) said that in 1987, the first year he rented land, he paid 20 naira for the three parcels; in 1988 he paid 25 naira, and in 1989 he expected to pay more. Although he was aware of the Act he would not attempt to renegotiate his arrangements.

In addition, it appears that changes in economic conditions as well as the conflicting opportunities and constraints created by the Act have produced changes in tree rental arrangements. Some evidence suggests that as people have tried to exploit positions regarding land as a result of the law, they have stimulated concomitant changes in tree tenure relations, which are not dealt with in any way by the Land Use Act. For example, while some

landowners have been unable to increase the rent on land, they have attempted to increase rent on trees on the land. The presence of trees is often one of the main reasons why the land was rented in the first place. When landowners or tree owners have been unsuccessful in changing the terms of tree rent, they have attempted to displace the tenants.

The Act has also affected tenancy relationships on a village level. There have been successful renegotiations of "rental" arrangements between communities. This has occurred in the research villages.

The *bale* of Baase stated that "in the old days" a tribute or type of *isakole* was paid to the "holders of superior land rights." He suggested during one conversation that Oluborode and Oosa paid tribute to Baase prior to 1978 because Baase was the senior village, established before the other two. Over the years before 1978 the payment from Oluborode and Oosa had become more like a rent as the villages paid a preestablished number of tins of palm oil which varied depending on the previous and current years' harvests.⁴⁵ Each village also paid a cash tribute of 10 shillings.⁴⁶ After the Act was promulgated, farmers from Oosa and Oluborode approached the elders in Baase and claimed that since the government now owned the land they should no longer be required to pay "rent." They resolved the issue by agreeing that the villages would attend an annual feast in Baase each year, to which Oluborode and Oosa would contribute produce, including palm oil, and 20 naira.

The villagers of Oluborode, on the other hand, claim that they never paid *isakole* to Baase. They say that each year they paid tribute to the king of Iwo, and that they deposited their tribute with Baase because Baase was senior and that the king's men collected the tribute from Baase. Oluborode villagers say that in 1978 they stopped paying tribute to the king, for the same reasons cited above, but they also agreed that each year they would have a feast at Baase to which they would contribute produce and "some cash." Regardless of which version is accurate, and it may be that elements of both are true, it is obvious that after the promulgation of the Act in 1978, farmers in these villages renegotiated tenancy relationships at the village level. I suggest that there is a relationship between economic power and the ability to transform (or resist transformation of) rental arrangements on the community level similar to the one that exists on the individual level. In this case the combined power of Oluborode and Oosa was great enough to force Baase to redefine the terms of payment.

There are comparable accounts in the literature of other changes in community tenancy relationships after the promulgation of the Act. These outcomes are instructive. Changes in tenancy relationships in Modakeke, Ife, and Agbasa Urhobis, Warri, occurred between communities after the promulgation of the law. These changes led to increased conflicts that have continued to the present. Many led to different court rulings with regard to the intent of the Act (Udo 1985; *Herald*, 1 September 1988, p. 1). However, the changes in tenancy arrangements between communities have not been uniform.

The case of Modakeke is well known in southwest Nigeria. Modakeke is an area just outside Ife, Oyo State. The Modakeke came to occupy their present site after the collapse of old Oyo during the political turmoil of the nineteenth century (Berry 1975, 1985). The Ifes consider the area occupied by the Modakeke as part of Ife, while the Modakeke consider the area their own. Many of the Modakeke are cocoa farmers. Relations between the two communities have always been strained and at times marked by violence.

The tenancy disputes began to emerge on a large scale in the early 1950s. In this period rising cocoa prices brought many migrants to Ife to plant cocoa trees. Many Ife families earned substantial income in the form of *isakole* payments from these migrants. Some Ife families suggested that since the Modakeke were also strangers they should also pay tribute. In this case, however, the tribute was a rent, a demand for a set fee. The Modakeke, many of whom had been farming on their land for generations, rejected this idea. However, some were compelled to pay. Many who resisted were taken to court and ordered to pay. The disputes increased, necessitating a political decision. The issue of whether or not the Modakeke should pay *isakole* was finally settled by the Ooni (chief) of Ife who ruled in favor of the Ifes. The Modakeke have continued to resist.

Although there is no hard evidence available, it has been suggested by several academics and lands officers that the number of disputes in Modakeke increased substantially after the law was promulgated. Many farmers in Modakeke, citing the Act, refused to pay rent and altered the terms of their relationships with Ife families.

In 1988 another violent dispute broke out that required state government intervention. The *Herald* (1 September 1988) ran a headline that read, "Royalty: 8,000 farmers poised for action."⁴⁷ In May 1988 two Modakeke farmers were convicted in an Ife Grade C Court of trespassing and stealing palm fruit between 1978 and 1988. This ruling affirms that tenancy is legal, contradicting the intent of the Act. The defendants claimed that they were not trespassing since they had been farming the land in question for the past twenty and forty-eight years. The conviction set off a round of battles between Modakeke and Ifes that required police intervention. The Modakeke claim that because of the Land Use Act they no longer have to pay rent. The Ifes claim that the law has been abrogated and want the "tenants" evicted if they fail to pay.

In this case the Ife families appear to have the necessary power to force Modakeke farmers to pay *isakole*. The important point is that the court ordered the two defendants to pay 1,000 naira each for the ten-year period. The defendants were later committed to prison for failure to pay. In the past, courts that ordered tenants to pay rent rarely took additional action. Tenants were seldom evicted and almost never sentenced to prison. This action adds a new dimension to conflicts over tenants' rights.

Opportunities Created by the Land Use Act to Exploit the Peasantry

The Act has created new opportunities for elite, both civilian and military, to "take" land from peasant farmers. This is the second important impact of the Act on peasant farmers at the local level. Again, this impact is very diffuse, making it difficult to quantify; however, it is apparent from talking to academics, bureaucrats, and farmers that wealthy, urban-based elites have used the mystique (or threat) of the Act, along with other legal and bureaucratic tools, to take land from peasant farmers.

Shortly after the Act was promulgated, farmers in the three villages say that there were a number of "big men" from the city or elsewhere who came to these and nearby villages to acquire land. Some of these people used the threat of the Act to convince farmers to sell their land at reduced rates. Farmers reported that it was common to hear a big man say that a farmer should sell his land before the government took it. Some big men are even said to have told farmers that they knew that the government was going to confiscate their land and that they should sell to them before it was too late. There were evidently several farmers from villages near my research site who had sold land under these conditions.

As the economy has changed in the last few years, farmers in the three villages say that there has again been an increase in the number of people or firms coming to the villages and trying to purchase land. As agricultural prices have increased, wealthier entrepreneurs have increased their attempts to dislodge peasants from their holdings. But it is clear that they have not always been successful. Many farmers have resisted these attempts to acquire their land. Some farmers also reported that they feared registration because it would bring attention to their property, making them vulnerable to acquisitive "big men" with contacts at the Lands Office.

Peasant Farmers, Loans, and the Land Use Act

Another issue is the relationship between bank loans and the Land Use Act. I noted earlier that both proponents of the Act and opponents of customary tenure have argued that the lack of credit is a major constraint faced by peasant farmers. The proponents of the Act argue that it would create conditions whereby peasant farmers could use their land, after registration, as collateral for acquiring bank loans. Academics and bureaucrats agree that this is one area where the Act has failed completely.

This assessment is shared by peasant farmers. All of the peasant farmers with whom I spoke stated that they had never had a bank loan. Most of them added that they were unaware of, or disbelieved, the government's assertion that registration and a C of O would facilitate a bank loan. Most agreed with the statement by one farmer who said that he could not acquire a bank loan because "I do not know anyone at the bank and to get a loan you have to know someone." This perception was supported by the experience of the commercial farmers I interviewed who had acquired loans without the requisite C of O.

Women Peasant Farmers

Finally let us consider the impact of the Act on women farmers, beginning with a description of their farming operations.

Over the last ten years there has been an increase in the number of women who farm in the villages. None of the women has planted cocoa or oil palm trees, though some have inherited tree farms from their fathers. Women are responsible for all the work on their own farms, although their husbands usually help with the heavier work of stumping and clearing fields.

There is very little information available in the literature that indicates the parcel size of women's "individual" farms. Spiro found that women farmers' average parcel size ranged between .2 hectare and .5 hectare.⁴⁸ In the three villages in Iwo I found that women's parcel size (or more accurately, area of individual farming operations) ranged from 300 heaps (.06 hectare) to 1,200 heaps (.25 hectare). The men who have given their wives a piece of their land to farm appear to have done so as a way to increase household income and bypass the costs of increased labor. It is unclear if women have increased farming activities at their husbands' request or on their own initiative.

A few of the older widows in the villages told me that their husbands' families had allowed them to continue to use a piece of the husband's land after his death. This land could be taken back at any time, making the widow's holding insecure. Other less frequent methods of acquisition in the villages include gift, loan, lease, and purchase. Some of the women were leasing land and/or trees.⁴⁹ Many women in the three villages noted that they had land and/or trees that they had inherited in their natal villages, but that they were too far away to work. Some of these women leased their land and/or trees to men or women in their natal villages.

Women Peasant Farmers and the Land Use Act

None of the women in the case study had heard of the Land Use Act. A few other women in the three villages said that they had heard of the Act but could not provide any details as to what the Act meant or what it was supposed to do. Nor did the women know of the Land Advisory and Allocation Committee. None had heard of or understood the terms "registration" or "Certificate of Occupancy." Of course, then, none of the women had registered any land, nor did any of them intend to try to do so. Somewhat like the men, the women felt secure that they could defend their interests in the event that the state or elite tried to acquire their land. In contrast, however, they did not feel the same sense of confidence should their husbands decide to take back their land. Women saw threats to their use and control of land only from men or other family members. The women to whom I spoke who leased out land and/or trees appeared very confident about their control over these assets. For women, therefore, the Act (or the state) is a secondary threat.

I did not find any indication of women trying to alter their *isakole* relationships--but since I spoke to far fewer women than men, it is possible that my observation is not representative. I suspect that women are not able to use the mystique of the Act, or their economic positions, in the same way that some men are, but that some women may use changing socioeconomic conditions, such as inflated costs of goods and services, to renegotiate their rental agreements. These limitations are due to their inferior status as rights-holders. The relationship between changing economic conditions and tenure rules for women is an important topic for further research.

It is apparent that the Act has not created new opportunities for women to acquire or maintain rural land rights. The state has not attempted in any way to ensure that Nigerian women and men have equal access to rural land. Women have been unable to overcome the recent postcocoa era constraints they face regarding land acquisition, and it is clear that without state support they will be unable to do so. Furthermore, the Act may actually hurt women by reducing their access to land and degrading their fragile socioeconomic position. For example, if the state or elite acquire or confiscate land from peasants, women will lose more than men. Women will not be compensated in new land or remunerated for lost land by their husbands or by the state. Farmers reported that if they sell land or if the state acquires land from them and compensates them (a questionable prospect), they felt no obligation to compensate their wives for their lost land, labor, or investments. They added that if they had additional land available they might "give" a portion to their wives; if land were not available then the wives would have to acquire land (that is, lease or borrow) elsewhere if they wanted to continue to farm. Further, since the state does not statutorily recognize secondary user rights (including women's use of their husbands' land), it will not compensate them for the loss of land if it is acquired. Increasingly women could be hurt this way. Women have begun to farm their "own" parcels in greater numbers as a way to help feed their families in more difficult economic circumstances. Yet these same economic conditions may lead more farmers to sell or lease land to commercial interests, depriving women of this much-needed resource. This could lead to greater tension within households.

Another way that women may be affected as a result of the nexus between the Act and economic conditions relates to their palm oil activities. One of the most important income-generating activities for women in these villages is the production and sale of palm oil and kernels. Women acquire palm fruit in a variety of ways, including by renting palm trees from others; in this case they pay an "access fee," which seems to be different from *isakole* because they are paying for the use of the trees and not the land.⁵⁰ Because the Act does not regulate or protect trees, women are in a weaker position. If the government confiscates land or if a farmer sells land where palm trees are located, women will be the major losers. In either case, whether the land is sold or confiscated, it is unlikely that women will be compensated for the loss of these productive assets. In addition, as land becomes more valuable and individualized, women could be increasingly squeezed out of the palm oil business. This too is an important topic for further study.

5. COMMERCIAL FARMERS AND THE LAND USE ACT IN SOUTHWEST NIGERIA

Commercial Farmers and Registration: Hypotheses and Analysis

As we have seen, less than 1 percent of all farmers in Oyo State register land. The few who register are commercial farmers, distinct from peasants in the size and capital intensity of their operations, among other characteristics. But they represent only a fraction of all the commercial farmers, giving rise to a number of questions. Why do a few of commercial farmers register land while most do not? What are the differences between these two categories of individuals, registered and nonregistered? What are the factors that prompt one farmer to register and another not to do so? Do people register for reasons other than the purported benefits promised by the Act?

I hypothesized that commercial farmers who chose to register would belong to the "new elite" and those who chose not to register would be part of the "old elite." I use the term "new elite" to refer to urban-based capitalists. They are often distinguished from the old elite on the basis of education, business interests, location of primary residence, and political participation in the civilian and military postindependence governments. Most are businessmen; many engage in political activities in local, state, and/or federal government; and most are well educated in Western-type schools. The category also includes high-ranking civil servants, bureaucrats, military and police officers. The new elite who have agricultural interests are more likely to have individualized landholdings than are the old elite.⁵¹

The term "old elite" generally refers to "traditional" or customary authorities, sometimes known as the traditional aristocracy. In this discussion the term also refers to rural-based capitalists. Rural-based capitalists are different from their urban-based counterparts in many ways, living mainly in smaller towns and relying more heavily on family or kin ties to support and protect their interests. They are less likely to have advanced, Western-type educations than the new elite or to be a part of the current civil service or elected political structure, although many engage in political and judicial activities at the local level. The old elite usually farm on family land; they are also more likely to rent land in and out. The old elite are not necessarily poorer nor do they exploit land and labor less than their urban-based counterparts. Indeed, the old elite studied appeared, on the whole, to be wealthier and have access to more capital than the new elite.⁵²

All four of the registered farmers I interviewed were part of the new elite, while at least four of the nonregistered farmers were part of the old elite (Myers 1990, pp. 331-33). In general, those with registered land were better educated than those without registered land (ibid., p. 357).⁵³ The registered farmers have primary residences in major urban centers,

while the nonregistered farmers, with one exception, reside in smaller towns and have stronger social and economic links to the local communities where they farm. With one exception, the nonregistered commercial farmers were engaged in local politics or had traditional chieftaincy titles.

The nonregistered commercial farmers interviewed have control of, or access to, much larger areas of land than do the farmers with registered land. The nonregistered farmers also tend to have a greater number of parcels, spread out over a greater area and often in different ecological niches. In contrast, the registered farmers have land that is usually concentrated in one or two parcels, set side by side in a single ecological area. Five of the six farmers without registered land noted that they felt confident in their access to additional family land, while the farmers with registered land did not express the same confidence.

The registered farmers were all relatively new to their agricultural enterprises. All but one had begun commercial farming operations within the last two to three years. The capital to invest in land and agriculture came from nonagricultural commercial activities or salaried positions.⁵⁴ In contrast, five of the six nonregistered farmers have been farming all their lives. Three of the six noted that they have expanded operations both to make a profit and to supplement household income. Capital for their farming operations was drawn from a variety of sources, ranging from land sales to commercial trading operations.

The registered farmers were all planning major high-technology investments on their land. All stated that they planned to invest or had invested in some type of agribusiness (for example, producing pigs, goats, sheep, and/or fish, as well as processing ground crops). Only one nonregistered farmer expressed a desire to obtain high-tech equipment to process palm oil (Myers 1990, pp. 325-26). On the other hand, the registered farmers were less inclined to grow tree crops than the nonregistered farmers, who often had palm, cocoa, or banana tree operations on their farms. The registered farmers were less interested in tree crops because of their overall long-term investment goals in high-technology agribusiness operations.

All six of the nonregistered farmers have at one time rented or owned tractors. Three of the six currently own their own farm machinery, while the other three now use manual laborers exclusively because machinery is prohibitively expensive or unavailable. None of the registered farmers reported owning farm machinery.⁵⁵ All four have rented tractors in the past, but only one does so now.⁵⁶

Although the Act was supposed to facilitate the acquisition of commercial loans, the nonregistered farmers appear to have had better success in gaining access to formal credit. Three of the nonregistered farmers have had at least one commercial loan. Of the remaining three, two have never applied, and one was applying for a loan at the time of my research. In contrast, only one of the registered farmers reported successfully securing a commercial loan. Two had had applications for loans denied, and one was in the process of applying for a loan at the time of my research.

The nonregistered farmers in the study reported five different reasons for not registering land. First, five out of six stated that they did not perceive a significant threat by the state or other elite (one did not comment on this subject). Although not immune from challenges to their property, they seem to be in a better position than the registered farmers to defend their land and assets. This could be due to a variety of factors, such as the relatively long period of occupation of the land and ability to call upon numerous kin and nonkin to defend their interests. Also, two of the six stated that they can support their claims through previously acquired conveyances.

Second, five of the six said that if they perceived any threat they had the means to secure their interests without resorting to state involvement. These five noted that they could call upon customary or traditional legal and social mechanisms to support and defend their interests. For example, if a dispute arose the landowner would request the intervention of the local chief. If a decision were disputed, other, more senior traditional authorities could be called upon. A disputant could also call upon local witnesses. If one party refused to agree to a decision, the local community or authority could exert financial, political, or physical pressure and force compliance. One of the nonregistered farmers stated that he and others have not registered because they do not want to deal with the problems associated with registration. He added that they "prefer to use traditional methods" to protect their land.

Third, at least five of the six could not register land because they were constrained from doing so by the same mechanisms that support their interests and make registration unnecessary for them. Five of the six rural-based capitalists use family land. Their families would not approve registration of the land by one individual because it might threaten the family's access or rights to the land.

Fourth, these farmers may be successful in acquiring some of the benefits promised by the Act without complying with its provisions. For example, three of the six had acquired bank loans but only one of the registered farmers had. And fifth, all the nonregistered commercial farmers stated that they did not register farmland because the process was too expensive and arduous. Despite these reasons, two of the nonregistered farmers noted that they would like to register but could not (due to financial constraints and family opposition), and two said that they had had part or all of their land surveyed.⁵⁷ Of these two, one was considering registration in 1988, but still had not applied as of September 1990.

The new elite who registered their land appear to have done so because they could not as readily call on the same mechanisms that the old elite do. It appears that they must depend more often on state institutions, such as the courts, to protect their interests. Registration for the new elite also appears to be a way of dealing with problems associated with family and family land tenure. In all four registered cases the parcels had been purchased with the intent of being kept separate from the owners' families. Some of the registered farmers said that they had to purchase land because there was not enough family land, but it was also clear that they wanted to invest in agribusinesses and did not want to deal with problems that might be created by the family if these businesses were on family land. To one degree or another they

all felt threatened by, or vulnerable to, family demands. Registration may also be a means for some elite to legitimize their acquisitions, as discussed below.

I suggest that the examples in this case study are not unique. They support my original hypothesis that commercial farmers who register farmland are new elite and those who choose not to register are old elite.⁵⁸ But although old elite generally may not register, they still may exploit other aspects of the Act, just as do new elite. In any case, I would assert that membership in the elite (that is, new or old elite) is a predictor of one's propensity to register farmland.

While this hypothesis is supported by my findings, further research and refinement of the hypothesis are required. Membership in the new elite segment of the capitalist class is not in itself enough to lead one to register land. I suggest that the decision to register farmland is dependent on the perceived level of vulnerability or insecurity and how it can best be dealt with. In this context insecurity is defined as a susceptibility to a real or potential threat to one's land or other property. I hypothesize that new elite will register if they feel vulnerable or insecure--that is, if they feel that their claims might be challenged or their property taken by someone or by the state (without compensation)--and if they feel that registration is the best means available for protecting their assets. Examples from the case studies support this revised hypothesis.

Each of the four farmers who had registered land indicated some problems or challenges to their control of it (Myers 1990). Case #1 noted that a building had recently been erected on or very near the border of his land. He perceived this as a threat and planned to have the land resurveyed and even, if necessary, to pursue legal or other means to have the building removed. His comments indicated a longstanding dispute with either the previous owner or other local residents whose property adjoins his. Case #2 had had a similar experience. He assumed control of the land when his father died. For several years the land was not used, and local residents were watching over the land for the owner's family. When the owner attempted to survey and register the land there was a dispute, and the local family members who had been watching the farm "had to be driven off the land." His comments also indicated a longstanding dispute, one that appears to have begun while the owner's father had the land. Case #3 indicated that he registered his land to protect it from both the government and his own family. He was more concerned about his family encroaching upon the land than the state, and his comments indicated previous disputes over investments on family land.

Case #4 is particularly interesting. He owns two portions of farmland (he is also renting land elsewhere), one of which is 10.6 hectares in Ibadan LGA. Ten hectares were acquired from one family, while the .6 hectare (which is currently registered) was acquired from another family. The two parcels are contiguous. At the time of the interview he had been farming this land for twelve years as its owner. He had purchased it because prior to that he had been leasing it and had experienced trouble as a renter. His story was that in 1971 he was growing cassava and traveling; his relatives were watching the land for him.

TABLE 5.1
Reported Land Holdings of Registered and Nonregistered
Commercial Farmers

Registered Farmers

Case One:

1.2 hectares (purchased).
 May have access to
 family land.

Case Two:

1.26 hectares (inherited,
 purchased by father). Rents
 an additional 20 hectares
 from government.
 No access to family land.

Case Three:

2.2 hectares (purchased).
 Plans to purchase an
 additional 5 hectares.
 No access to family land.

Case Four:

18.6 hectares (purchased).
 Plans to rent an additional
 500 acres.
 May have access to family land.

Nonregistered Farmers

Case One:

50 acres of (family?)
 land (inherited).
 Has access to additional
 family land.

Case Two:

345 acres of personal land
 (purchased and inherited).
 No access to family land.

Case Three:

230 acres of personal
 land (purchased).
 May have access to family
 land.

Case Four:

12 acres of rental land.
 May have access to
 family land.

Case Five:

8 acres of family land.
 Has access to additional
 family land.

Case Six:

6 square milies of personal
 land (purchased).
 May have access to family land.

While he was away some local people (perhaps the owners) came onto the farm and uprooted his crops. He also says that the family who owned the land wanted it back. He approached the family to sell the farmland to him, but they consented to sell only if he would also purchase an urban plot from them. He paid approximately 3,000 naira for the urban plot and an undisclosed sum for the 10 hectares of farmland. But evidently the dispute was not fully resolved, and in the early 1980s, concerned about the disputes with the previous owners and that the government might be interested in his land, he had his property surveyed. In 1986 he applied for a C of O. The .6 hectare was registered without any problems, but the previous owners disputed the survey of the 10-hectare plot and contested its registration. The application for registration of the parcel was denied by the Lands Office. At the time of the interview case #4 was having the land resurveyed and was resubmitting an application for registration.

The propensity by new elite to register land may also be determined by a combination of two factors--the way the land was acquired and the political or economic power of the individual acquiring the land. In short, rank or position within the new elite also seems to be an important indicator of one's propensity to register. Findings of other studies and interviews with academics, policy planners, and administrators support this position (see also Koehn 1983, 1984; Olawoye, personal communication, April 1988).

The interviews and literature suggest that the wealthier or more powerful military and civilian elite may not feel that they need to register farmland--regardless of how the land was acquired. These individuals are often referred to as the "untouchables"; they have other means available to them to protect their interests if they feel threatened. These same means also help them to secure other benefits promised by the Act without complying with the law's provisions. For example, they easily acquire bank loans (which often become grants, see Myers 1990) without supplying a Certificate of Occupancy as collateral.

However, for those who are not part of the "untouchables," the more junior or mid-level bureaucrats or officers and private businessmen, I suggest the propensity to register appears to be dependent on the method of land acquisition and the perceived degree and source of vulnerability. For example, if a junior or mid-level military officer, civil servant, and businessman uses the threat of his position to gain access to land at a greatly reduced price, or to acquire land in a highly prized location, he may also choose not to register to avoid bringing attention to himself. Registration may bring scrutiny of his activities from political rivals, particularly if he is associated with the current political regime. Several academics and bureaucrats at the Lands Office in Ibadan noted that some who may consider themselves vulnerable do not register to avoid bringing attention to themselves or their activities.⁵⁹

At the same time, if the degree of the threat is minimal or the source is not related to the state or military regime, I suggest junior or mid-level bureaucrats and officers, civil servants, and businessmen will register land to legitimize their acquisitions. They will do this whether the land was acquired through "fair" or unscrupulous means. For example, two of

the four farmers interviewed with registered land were civil servants, and a third had a strong connection with the civil service.⁶⁰ These individuals appear to have exploited their positions or connections to assist them in acquiring and/or registering land. Their potential vulnerability appears to be minimal, but if it comes, its source would be from local farmers and peasants.

An important aspect of this equation is that one's level of insecurity also changes with the rise and fall of economic circumstances. For example, the Structural Adjustment Program has increased the opportunities for lucrative activities in agriculture for a few elite while creating greater insecurity for many peasants and other landowners. Military elite particularly have acquired vast holdings of land, and civilian elite have also invested heavily in landed property. Francis (personal communication, March 1988) and others state that military officers have been acquiring land all over the country, including in Oyo State. Francis adds that as the military hands over power to civilians there is an increase in legal and illegal land grabbing by retiring military elite, just as there was before the military left power in 1979. The literature and interviews suggest that for some of these individuals registration may be a means of legitimizing land acquisitions.⁶¹ The increase in transfers has meant that land has become even more valuable and in greater demand in some areas of the country, which may in turn lead to greater insecurity for some peasant farmers. In addition, the Structural Adjustment Program may have undermined the economic and political positions of some elite, making it another factor that may affect people's choices to register or not.

Finally, many new elite who choose not to register do so because they feel their rights are secure and that the registration process is too expensive, arduous, and unnecessary. If the administration of the Act were radically revised and recipients of a Certificate of Occupancy were assured of the benefits promised by the Act, more new elite would likely register their land.

In summary, new elite register land when: (1) they cannot call on the same traditional political or social mechanisms that old elite can to support their interests, (2) they feel insecure because of actual or potential challenges to their land rights and they do not believe that registration will bring unwanted attention to them, (3) they are not part of the "untouchable" segment of their group. In addition, one's propensity to register land will change with one's rising or falling economic or political fortunes as the economic and political climate changes.

Commercial Farmers, the Land Use Act, and Tenure Relationships

The opportunities created by the Act for commercial farmers have also led to changes in tenure arrangements in southwest Nigeria. The Act has facilitated a shift in property rights from lineage and family to the individual, and it has contributed to the commodification and

increasing specificity of tenancy arrangements between commercial farmers as well as between commercial farmers and peasants.

The transformation of land rights from control by the family or lineage to control by individuals is being facilitated in at least three ways. First, the provisions and intent of the Act encourage individualization of land by focusing on the individual as opposed to the family or lineage. The Act provides the means for an individual to claim rights, survey land, and register it in his name or the name of a corporation. There are no provisions that recognize secondary user rights, nor in Oyo State can a community, lineage, family, or other group register land. All four of the commercial farmers with registered land had acquired land that had been family property belonging to families other than their own. The purchase transformed the land to individual property, and this individualization was made more concrete when the land was surveyed and registered in the farmers' respective names.

Second, the Act facilitates individualization by providing elite with a weapon to persuade local peasant rights-holders to relinquish land to them. Numerous local farmers, academics, bureaucrats, and policy planners stated that they had heard or seen military officials and civilian businessmen, as well as traditional authorities or other old elite, force landowners to sell their land. At least three of the six nonregistered farmers interviewed had exploited the Act in this way; that is, they had "persuaded" local farmers to sell them land. The peasant farmers stated that these commercial farmers told them that the government was going to take their land for development projects and that they should sell land to avoid losing it without remuneration. Several peasant farmers "accepted" this offer and sold land at prices well below its value. In general, land acquired by this kind of "persuasion" is either used for large-scale or high-technology agricultural projects or held for speculative purposes. In either case the land usually shifts from being controlled by a family or community to being controlled by an individual or corporation. This not only leads to individualization of holdings but can also contribute to landlessness among peasant farmers.

Third, the Act may also facilitate individualization of tenure through provisions empowering the state to acquire land and to pay compensation for land acquired. Often when the state acquires land for development or agricultural projects, the land is taken from communities, lineages, or families. Even when the land is acquired from individuals there are usually secondary users who claim rights to the land. Once the state takes control of the land it is often sold or leased to private development organizations, commercial farms, or individuals. Where the land was once controlled or owned by several people, or where several people claimed use rights, the land becomes controlled by one individual or a corporation. Further, the law stipulates that if land is acquired by the state, or more precisely if a Right of Occupancy is revoked, the state will pay the landowner for unexhausted improvements. The law also states that in lieu of financial compensation state governments can provide alternate land for those whose land is acquired.⁶² In both instances, remuneration or resettlement, the focus is on the individual or primary rights-holder. Secondary users are not compensated for their loss. Thus, the Act and its administration facilitate the transition of tenure from community, lineage, or family to individual control.

Commercial Farmers, the Land Use Act, and Tenancy

The Act has also provided opportunities for commercial farmers and other capitalists that have affected rural tenancy relationships, contributing to their overall commodification and specificity. Changes in tenancy may also be leading to greater individualization of tenure. The cases described here are suggestive of the behavior of a wider population of commercial farmers.

Earlier I noted two different types of *isakole* tenancy arrangements practiced by peasant farmers and stated that some of these are becoming commodified over time. Tenancy arrangements involving commercial farmers tend to be even more commodified than arrangements between peasant farmers. There is usually a large fee charged to the renter at the beginning of the tenancy. In addition, the amount of rent in these relationships is much larger than in the traditional *isakole* arrangements between peasants, and it is usually proportional to the area of land rented. The rent is also based upon at least three other considerations. First, rents tend to increase as a result of inflation or other economic pressures (once raised, rents almost never decrease). Second, the length of time one has been on the land affects the amount, which increases over time. Finally, the rent is also a function of the type of crops grown and the scale of the investment. These factors are interrelated, since investment usually increases over time, as does inflationary pressure. In addition, tenancy arrangements involving commercial farmers tend to be more clearly delineated, sometimes in writing. Although the arrangement is less flexible than the relationship between peasants, the renter is freer to do as he pleases on the land (although planting trees is not allowed unless it is expressly part of the agreement). From interviews with peasant and commercial farmers, academics and administrators, it appears that commercial farmers engage in tenancy arrangements less frequently than do peasant farmers. Commercial farmers find tenancy arrangements unproductive and insecure, while peasant farmers find the returns for these arrangements economic and social.

Both the registered and nonregistered commercial farmers interviewed tended to distinguish between more traditional *isakole* arrangements and more commodified ones, although both groups used the term *isakole* to describe either arrangement. Individuals from both groups have had or continue to have both types of tenancy relationship. Commercial farmers tended to have commodified rental arrangements with other commercial farmers and more traditional *isakole* arrangements with peasant farmers. In the latter case commercial farmers allowed peasants to rent from them under the conditions of an *isakole* rental arrangement; however, some peasant farmers have reportedly been successful in forcing commercial farmers who rent land from them into commodified tenancy arrangements as well.⁶³

Three of the nonregistered commercial farmers participated in tenancy relationships. Cases #1 and #2 leased land to peasants under the conditions of an *isakole* arrangement.

Case #4 is especially interesting in that he engages in a rental agreement that exhibits both traditional *isakole* and commodified features.

Case #4 is a very prosperous pharmaceutical merchant in Iwo Town. He has family land about 10 kilometers from the town but considers it "too far away to work." In 1985 or 1986 he began to lease 12 acres of land near Olupona (see maps 1.3 and 1.3a, pp. 7 and 8) from another family. The family he rents from is part of the peasantry, but they control "miles and miles of land," and at least one of the sons is what I have defined as part of the old elite or a rural-based capitalist (he is case #5 of the nonregistered farmers). To acquire the farmland case #4 had to meet with the landowning family, particularly its head (*baba*), several times. On the first visit he gave the family 50 naira and on each subsequent visit he brought presents for the *baba*. In the first year after possession of the land he paid only 5 naira in rent, but he also had to dash in cash and kind during the holidays. In 1987/88 the farmer reported that the rent was increased to 50 naira "because the family saw how much I was investing on the land and saw that I was making it profitable." In 1990 the family requested one tin of palm oil for rent (the value of a tin in September 1990 was between 160 and 180 naira).

In some ways his rental arrangement with the family is representative of commodified arrangements between commercial farmers, but in other ways it reflects arrangements between peasant and commercial farmers or even arrangements among peasant farmers. His agreement is for an unspecified period of time; as long as he pays rent, dashes during the holidays, and behaves properly, the family will not throw him off the land. At the same time, his rent is subject to change annually, often based upon the amount he invests and his productivity. He has also attempted to secure a written lease from the family.⁶⁴

The combination of economic factors and land policy has contributed to making tenancy arrangements more commodified and specific over the last few years. All the commercial farmers interviewed and many bureaucrats and academics stated that rental fees for agricultural land are much higher now for individuals entering into farming (most of whom are new elite entrepreneurs) than they were a few years ago. The fees are increasingly based on the area cultivated and the types of crops grown. A lands officer in Ibadan stated, "There is a trend now to rent land to the new breed of farmers at fantastic sums." Many people interviewed stated that these increases and other changes began with the deterioration of the economy following the oil bust and the introduction of SAP.

The Land Use Act has contributed to the commodification and specificity of tenancy arrangements in at least three ways. First, the Act has introduced a certain measure of uncertainty into tenure relationships. This process among peasant farmers was described in section four. It is evident that a similar process is occurring among commercial farmers and between commercial and peasant farmers. Given the changes in the economy and the stakes involved in high-technology agricultural enterprises that commercial farmers are undertaking, neither landlords nor tenants can afford to continue to rely on traditional *isakole* relationships, because the provisions of the Act may be used against either party. For example, a tenant

may claim that the Act outlaws rental arrangements and that his payment constitutes purchase of the land. Thus, he may use the mystique of the law to strip the landowner of his land or to affect the tenancy arrangement in his favor. On the other hand, the landowner may use the same argument with regard to the prohibition of rental arrangements to evict the tenant. Consequently, landlords and tenants are tending toward the negotiation of commodified tenancy relationships. The relationships are more specifically defined, at times in writing, and they are based more on the economic value of the land or types of crops grown than on personal relations.

Second, the Act has contributed to commodification because it has led to individualization of property. Farmers feel freer to charge higher rents based on factors such as the area under cultivation and the types of crops produced when the land is rented by an individual rather than a family, particularly when the individual plans to engage in commercial activities.

Third, the Act has led to commodification of tenancy because it has created opportunities for elite to acquire land. As reported above, local farmers noted that they felt more in control of their land if they charged commercial farmers higher rates, making the arrangement less familiar and more formal (for a more detailed discussion, see Myers 1990).

The increase in commodification of tenancy arrangements has gone hand in hand with greater investments on the land. Commercial farmers enter into expensive rental arrangements only if they can afford to engage in agricultural activities that will provide a high return. The renters often plan large agribusiness operations. These operations, because of the greater investment they require, may lead to a desire to strike commodified, specific arrangements; they may also lead to an increased willingness to engage in conflict and litigation. For example, I learned of several cases where rural landowners had allegedly leased land to commercial farmers and allowed the farmers to register the land, usually at the commercial farmer's insistence and assurance to the family that the land would remain the property of the family. Disputes arose when the rights-holders attempted to revoke the agreements or when commercial farmers refused to vacate the land when the term of the agreement expired.⁶⁵

If there is an increase in such cases, interesting changes in the nature of tenancy arrangements may result. If more commercial farmers or other entrepreneurs register rented land, the state and the renters could gain greater control over the land. On the other hand, the fear of such disputes could lead to greater insecurity and fewer rental arrangements between peasants and commercial farmers, thus potentially reducing agricultural investment and performance.

6. CONCLUSION: THE APPROPRIATENESS OF LAND NATIONALIZATION AS A POLICY INSTRUMENT IN NIGERIA

Summary of Major Findings

The purpose of this study was to investigate the effects of the Nigerian Land Use Act of 1978 on tenure arrangements and agricultural performance. It focused on peasant and commercial farmers in southwest Nigeria, paying particular attention to how each group has responded to the opportunities and constraints created by the law. The study also investigated the impact of these responses on the implementation and administration of the Act. In short, the study revealed the interplay between the state and law, on one hand, and land tenure and agriculture, on the other, and the resulting adjustments in tenure relations, relations between the state and individuals, and relations between and among peasants and elite.

The Federal Military Government promulgated the Act to bring the numerous and often contradictory common law decisions, statutory laws, and administrative policies designed to regulate the many indigenous land tenure arrangements in southern Nigeria within the purview of one law. The Act was also promulgated to address the alleged failings of customary tenure. It was said that customary tenure failed to provide sufficient security, inhibited land markets, was inefficient, encouraged speculation, created fragmentation, and inhibited enterprising entrepreneurial farmers and commercial developers. Customary forms of tenure were also criticized for stimulating out-migration of young men and women, thereby creating labor shortages in the villages, and for preventing access to productive opportunities on the land. Tenancy arrangements were the most criticized aspect of customary tenure.

Two contradictory conclusions regarding the law found in research studies were: (1) that the Act has had little or no impact on tenure relations and that few people have responded to the opportunities created by the law; and (2) that the Act has facilitated land grabbing and stimulated tenure insecurity in some areas. I hypothesized that the Act had created opportunities to acquire and secure land rights by different social groups, and that the Act had empowered elites to grab and secure more land to the disadvantage of peasants. I also expected to find similar processes of exploitation within the peasantry, that the more entrepreneurial farmers would exploit elements of the law to their advantage. I expected the law to have contributed to social stratification both between social groups and within the peasantry.

Published literature and this study reveal that the administration of the Act in Oyo State is uneven--significant differences exist between the law's provisions and its implementation and administration. The registration process is excessively long and costly and some

lands officers demand payment of extraordinary fees. Lands officials and governors have the power to delay applications for several years, for legitimate or illegitimate reasons.

Although the provisions of the law give local governments a role in land administration, particularly through the Land Allocation Advisory Committees and the issuance of Customary Rights of Occupancy, administration of urban and rural land is controlled by the state government in a highly centralized process. There are no functioning Land Allocation Advisory Committees. Despite provisions establishing Statutory (urban) and Customary (rural) Rights of Occupancy, the government of Oyo State issues only a Certificate of Statutory Right of Occupancy. The number of Certificates of Occupancy issued in Oyo State for agricultural land in the period from 1978 to 1988 was estimated to be only 1 percent of the total C of Os issued.⁶⁶

Despite the wording of the law, the Lands Office does not make grants of either rural or urban land, except for residential plots in the exclusive Government Reserve Areas. Consequently, administrators of the law or other lands officers do not assist peasant farmers in acquiring land for agricultural purposes--although some officers covertly assist civilian or military elite to do this. The Lands Office usually becomes involved in rural land administration only at the point where a person who has already purchased or acquired land wishes to have his land surveyed and registered in order to acquire a Certificate of Occupancy.

In contrast to published literature and many statements from officials and academics interviewed, the Act has had an impact on tenure and agricultural performance and many people have responded to the opportunities and constraints created by the law. In this process, there have been some clear winners and losers, as well as instances where relations have been made more complex, commodified, and muddled.

The law has provided opportunities for some elite to gain access to land, and it has allowed some to legitimize their acquisitions. In general, new elite, particularly bureaucrats and other civil servants, have benefited most from opportunities created by the law. Many old elite have found the law unnecessary and some have found that it has seriously challenged their authority.

Over the last few years elite have increased their attempts to dislodge peasants from their land. As economic conditions have deteriorated for many and improved for a few, elite have increasingly attempted to use the power or threat of the Act to assist them in their attempts to gain access to land and to legitimize previous acquisitions. Some elite have used it to intimidate peasant farmers in selling them land, with varying degrees of success.

Commercial farmers have also exploited provisions of the law. Commercial farmers who are part of the new elite are more likely to register land than commercial farmers who are part of the old elite. Old elite commercial farmers did not register because they felt confident in their control over their land and could call upon traditional or customary legal

and social mechanisms to support or defend their interests if any threat arose. New elite who registered land did so because of real or perceived threats to their land rights. Method of land acquisition may also induce some new elite to register their land, but at the same time it may encourage others to avoid registration. There appears to be a relationship between one's decision to register, the method of acquisition, and status within the new elite. I suggest that people register land if they feel insecure in their rights but also feel that the land was fairly or properly acquired. New elite will not register if they feel that the land was improperly acquired or if they feel above reproach. In addition, it appears that a specific segment of the new elite, individuals who have a strong and clear identification and affiliation with the state (that is, bureaucrats and civil servants), are most likely to exploit and benefit from opportunities created by the Land Use Act.

The farmers who registered their land did so because they believed it would provide them with greater security and facilitate bank loans and alienation of the land. It was not clear if they had gained these benefits. Each of the farmers interviewed had experienced challenges to his interests. Somewhat unexpectedly, they have been less successful as a group in gaining access to commercial credit than the nonregistered farmers. None of them has attempted to sell his parcels, so it is not clear whether registration has facilitated alienation.

Wealthy peasant farmers have benefited from the Act somewhat, but most peasant farmers have also suffered from state and private commercial attempts to dislodge them from their land.⁶⁷ Women peasants may be the clearest losers.

Despite the state's attempt to nationalize all land, no peasant farmers in the village research sites (and most likely throughout the country) had registered farmland. All male farmers knew something about the Land Use Act, but all stated that it did not apply to them and that registration was unnecessary. These farmers believed that their holdings were secure and that registration would provide no additional security. At the same time most peasant farmers acknowledged the state governments and the Act as potential threats to their land rights. They all felt that the land was their own and not the state's. Women peasant farmers knew less about the law but also felt that their rights to land were secure from state interference. They saw the greatest threat to their rights from their husbands.

Even though most peasant farmers argued that the Act did not apply to them, some have used the mystique of the Act to renegotiate tenancy arrangements. Those peasant farmers who have economic power have been more successful in their attempts to change these relationships than those without such power. Similarly, those with economic power have been more successful in resisting attempts to change tenancy arrangements than those without it.

The Act, in conjunction with the changing economic conditions, has injected a new measure of insecurity into tenancy arrangements. Since many peasant farmers engage in these arrangements, and since these are very efficient and productive, this insecurity may negatively affect agricultural productivity in the peasant sector. In addition, the Act has not

provided any new opportunities for women to acquire or maintain rural land rights. Women did not appear to have sufficient economic clout to renegotiate tenancy arrangements. The Act may have serious negative impacts on women's economic positions and weaken their rights to land. It may generate new complex and competitive relations between men and women at the household level.

Although the state has not achieved its stated objectives in promulgating the law, the state governments have been the major beneficiaries of the Act. First, the Act generates enormous income for the state. State and federal governments are able to raise revenue, particularly in urban areas, through its administration. Although the state is required to pay compensation for confiscated land, the amount actually paid out is much less than the amount taken in each year for administration of the Act.⁶⁸ State governments also earn revenue when they confiscate land to establish agricultural or other development projects. This in effect is a tax on corporations that supplements the wealth that development projects bring to the state treasuries (Myers 1990, pp. 377-78).

Second, the Act has further enhanced the state's control over land. The state can confiscate land and turn it over to foreign or local enterprises, often with little or no compensation paid to the local landowners. The state, like some farmers, has also used the mystique of the law to gain access to land and other resources. Yet the state's power is not absolute. Although the Act has strengthened the state's power to gain control of land, it has not eliminated challenges from landowners. Local landowning peasant farmers are still very successful in resisting many of the state's attempts to confiscate land.

In summary, the law has not contributed to security of tenure, except for a specialized group of the new elite. In other instances the law has led to tenure insecurity and hindered both agricultural investment and performance. The Act has led to an increase in the number of cases of land disputes and litigation. It has not decreased fragmentation. Furthermore, the law has inhibited or warped the land markets, creating opportunities for some to buy land at prices below their market value. Nor has it stimulated investment in agriculture. The law has facilitated individualization of tenure arrangements for both peasant and commercial farmers. The Act has transformed customary land tenure arrangements and contributed to the commodification and specificity of tenancy arrangements among and between commercial and peasant farmers. At the same time that the Act is transforming or affecting tenure and agriculture, I believe that it is also inhibiting changes that might otherwise have occurred in customary and commercial tenure arrangements.

Given that the Act has had so many negative consequences for tenure and agriculture, two questions remain. Is land nationalization an appropriate policy choice in the Nigerian context? If not, what policy choices should the government make to resolve or remedy the current land tenure situation?

The Appropriateness of Land Nationalization: Conclusions and Recommendations

Other countries in Africa have tried land nationalization programs similar to Nigeria's in an effort to correct perceived problems in customary and "modern" tenure systems and to boost agricultural performance. Evidence from these countries indicates that results of their programs have also been disappointing. Beginning in 1984 the Land Tenure Center, University of Wisconsin-Madison, in conjunction with the World Bank and the U.S. Agency for International Development, carried out studies on the efficacy of state intervention, through such programs as land nationalization and/or registration, in affecting rural land tenure relations and agricultural performance. Studies conducted in Senegal, Burkina Faso, Ghana, Uganda, Rwanda, Somalia, and Kenya reveal that state interventions that attempted to replace customary tenure with state-conferred tenure were largely ineffective or counterproductive (Bruce et al. 1990, p. 5; see also Bruce 1989; Dickerman 1987; Barrows and Roth 1989).⁴⁹

This study and the research of the Center reveal that customary tenure institutions are resilient, evolving or adapting to new economic opportunities and constraints and resistant to state interference. The research findings of the Center also suggest that customary tenure systems are more effective in providing security of tenure than had previously been believed. As Bruce et al. (1990, p. 6) state, "These systems are not static but show considerable flexibility in responding to needs for rule changes created by increasing population densities, new technologies and new markets. When they fail to do so, it is often because their capacity to do so has been undermined by government policy."

It is clear that the Nigerian state has been unable to implement or administer its land nationalization program. The fact is that land continues to be held by peasants, local communities, and traditional authorities, and regulated according to customary or traditional rules and mechanisms. Fragmentation and land sales continue; there has been no noticeable increase in investment by peasants as a result of the law; and conflicts and litigation are endemic. Improper administration of the law has precluded its successful application. The law has fostered increased confusion and tension over land rights. The state's attempt to nationalize land to resolve agricultural performance problems has been ineffective.

I suggest that recent proposals to enhance federal and state control over land are ill-advised. Rather I believe that any land program in Nigeria should acknowledge that land continues to be held by peasants and regulated according to customary or traditional rules and mechanisms. It should also recognize that customary tenure institutions are resilient, flexible, and secure.

Bruce et al. (1990) recommend that new land programs move away from policy based on what they term the "replacement model," which tries to replace customary tenure with individualized leasehold (as provided by the Land Use Act) or freehold. They suggest that new policies follow an "adaptation model," where customary tenure remains the predominant

system and is allowed to "evolve" or change at its own rate. Land policy in Nigeria should follow this "adaptation" approach.

With this approach as a model I propose three alternative courses of reform with regard to the Land Use Act that might achieve some success in increasing security and productivity and improving agricultural performance. These alternatives might be seen as successive steps in an evolutionary development of land tenure law and policy in Nigeria.

Alternative One

The Land Use Act should remain in force and the state governments streamline the administrative process. Administrative procedures should be regularized and made uniform for all states in the federation.

The application process for registration should correspond to the following guidelines:

- ▶ Each state's Department of Lands (or the department responsible for administering the Act) should make available a clear and comprehensive guide that specifies the procedures to be followed in the application process.
- ▶ The guide should state the different procedures for acquiring different Rights of Occupancy (that is, statutory or customary) for urban and rural land. It should also specify the differences between and procedures for the application for a Right of Occupancy for commercial, industrial, agricultural, and forestry land.
- ▶ The guide should also state the rights and obligations of the applicant, including the right to a hearing if the application is disputed and the right to protest if the application is hindered due to administrative inefficiencies or corruption.
- ▶ Application forms should be provided by the Department of Lands (or the department responsible for administering the Act) at the Ministry of Agriculture.
- ▶ The application and guide should be free of charge.
- ▶ The applicant should be required to prove his/her rights to the land. This proof could be in the form of a conveyance, title, or other evidence of ownership. The applicant should not be required to demonstrate that the land was acquired before 1978, since this provision fosters an atmosphere of corruption.

- ▶ The application should include the signature of the family head, the village elder or chief, the ward and/or district head, and the local government chairman (or his representative).⁷⁰ This authentication should be considered as supporting evidence of ownership in any land dispute and should therefore enhance security of tenure.
- ▶ Each state's Department of Lands should identify the individual, individuals, or organization with the authority in each Local Government Area to authenticate or validate landownership.
- ▶ A Department of Lands officer should be responsible for verifying that the signatures are correct. A site inspection should be made to verify that the type of certificate requested is appropriate for the land being registered. Once this approval process is complete, any questions regarding the authentication of the ownership should pass to the Department of Lands.
- ▶ Within thirty days the state Department of Lands (or other appropriate department) must survey and mark the boundaries of the land. Survey information should be recorded on the application.
- ▶ Once this part of the application is submitted, the department must publicize the intent to register. Intent must be published in a local newspaper and posted at the Local Government Area office and in the village where the land is located.
- ▶ If the intent is challenged, the Department of Lands should review the case and render a decision. If the decision is challenged the department should automatically refer the case to court. In any case, clear procedures need to be established for hearing and resolving disputes in a timely and fair atmosphere.
- ▶ If after thirty days the intent is not challenged, the department should approve the application.
- ▶ In the absence of a dispute, the total process should take no more than seventy days: thirty days from the submission of the application to the time ownership is authenticated and the land is surveyed and marked; an additional thirty days' waiting period while the application is publicized; and ten days more to complete the administrative process (producing and recording the certificate, and so forth). If the department does not issue a decision within seventy days the application should be considered approved automatically.

- ▶ Each state should create an independent review panel to hear cases of problems in administration or misuse of power by the lands officers.
- ▶ The state governments should develop procedures that facilitate the alienation of a C of O, improving its market value and thus its collateral value. Although this is incongruent with the wording of the Act, it might still be accomplished through administrative procedures. For example, the transfer of a C of O could be considered approved by the governor as long as the transferee notifies the Department of Lands.
- ▶ The Department of Lands in each state should develop a registry that records the C of O transactions. This information should be made public.
- ▶ Once approved, the term of the certificate should be for ninety-nine years and renewable.

Other measures that the states should adopt include the following:

- ▶ The state governments should go on record supporting the value of a certificate. The states should confirm that a certificate is a valid legal instrument and the most important proof of ownership in a court dispute.
- ▶ The states should require the banks operating in their jurisdiction to accept a C of O as collateral. Federal or state governments should consider offering a guarantee on loans up to a specific limit on land that is secured with a C of O.
- ▶ The state governments should guarantee that if the land is confiscated for public purposes (through the exercise of eminent domain), the holder of a C of O will be compensated for the full market value of the land, any improvements on it, and any related investments.
- ▶ The government should provide incentives to encourage peasant farmers to register their land. A distinction should be made between peasant and commercial farmers, with the former allowed to register free of charge. All costs, except for land procurement associated with the acquisition and registration of the Certificate of Occupancy, should be paid by the state. These include surveying, boundary marking, and administrative costs (fees for forms, applications, advertisement of intent to register in the local newspapers).

- ▶ In addition, peasant farmers should be offered financial incentives to register their land. It is suggested that the state pay each farmer 200 naira to register his land. The peasant should be exempt from paying ground rent (usually charged when one has a C of O) and exempt from the land tax for five years.

Alternative Two

The second alternative goes a step further. The Land Use Act would remain in force and the state governments streamline the administrative process as described above. But, as an additional measure, families, communities, and other legally recognized bodies are encouraged to register their land. Either the federal government amends the Act or the state governments create administrative procedures to facilitate this alternative. The same incentives described above should apply in this situation. In this case all adult men and women should be allowed to register land as members of a legally recognized group.

This amendment would help to recognize and protect the many rights or claims to land within a group. It would allow these groups to receive the same benefits that individuals can now acquire under the provisions of the Act. In time, it might help to define all use rights associated with a piece of land. It would also afford the group an increased number of legal options that are now open to individual landowners in the modern court system, perhaps reducing the propensity to resort to extralegal (often violent) solutions.

In addition, procedures should be created to register tenancy arrangements, advancing the development of contractual arrangements. Each party would be allowed to record the terms of the arrangement, regardless of specificity or generality.

Alternative Three

As the administration process is streamlined and individuals are encouraged to register land or record their tenancy arrangements, the state would move to abrogate the Land Use Act. Land nationalization would be abandoned as the primary method of regulating land tenure, agricultural development, and resource management. If the Act were overturned, the land laws that preceded the Act would also be reviewed to determine their consistency with this objective.

State land and agricultural policy should recognize the customary and commercial (or freehold) land tenure systems and implement programs to support and protect their continued development. The state should recognize private individual, family, and community property. It is recommended that the state recognize social facts with regard to land rights to permit individuals to record a full range of land-use rights with the state. For a given piece of land

these might include the rights of the owner, tenants, tree owners, tree tenants, and herders. Each individual should be allowed and encouraged to record his or her rights with the state.

This alternative is not a new idea; in various forms it has been recommended for a number of years (Lloyd 1953, 1962; Bruce, personal communication, 1991). In the last few years it has begun to resurface. Although this plan may create significant administrative difficulties in its initial phases, over time it should greatly reduce extralegal conflicts, facilitate the evolution or development of land rights (most likely becoming individualized and privatized), and increase investment. In any case, it will allow this transformation process to occur as a result of changing socioeconomic conditions rather than as a result of some inappropriate legal mechanism. These use rights should be negotiable and, when appropriate, alienable.

The following demonstrates the point. All individuals who have a legal interest in a parcel of land (in this case a farmer, his wife, his family, a tenant farmer, a tree tenant, a group of herders, women in the village who gather fruit and grass, and men who hunt for small game) record that interest with the state. If someone wants to acquire the land, the primary rights-holders (the family and the farmer) must approve the alienation. Each should be compensated for the loss of his rights. In addition, all the secondary rights-holders (the wife, tenants, herders, hunters, and gatherers) should also be compensated for their loss. The compensation should be part of the acquisition price. Compensation of all rights-holders would also be required in cases of state acquisition. In this alternative land would be alienated closer to its true or actual value. The new owner would hold all the use rights to that parcel, making him truly an individual private owner. This should reduce any insecurity that might arise and encourage investment.

Recording secondary use rights may enhance their legal status (particularly women's and juniors' use rights) and increase access of these groups to the modern court system. This would undermine the power of unscrupulous bureaucrats or land-hungry elite to acquire land from peasants at ridiculously low rates, knowing that they have few means to dispute the transaction. Recording interests or use rights would limit confusion and counterclaims over land rights that often arise when land transactions occur.

In the final analysis, no land tenure or agricultural policies will be effective if the state does not commit itself to rural development. It must provide more resources for peasant farmers. If farmers can improve their standard of living they will be more competitive and more secure. They will be less vulnerable to exploitation and less in need of state institutional support. If peasant farmers are given more attention in the form of price supports, better infrastructure, and better transportation facilities, then they are more likely to be able to enlarge their holdings or expand production on existing holdings. This approach has a much greater chance of success than does land nationalization as a vehicle for reducing fragmentation, litigation, and speculation and increasing investment and productivity. It would help make peasant production commercially viable, perhaps reducing the gulf between the capitalist and peasant subsectors in Nigeria. This in turn could contribute to a

revitalization of agriculture and assist the country in its attempt to become self-sufficient in food production within a more equitable framework.

APPENDIX FOUR

LAND USE DECREE 1978

LAND USE DECREE 1978

ARRANGEMENT OF SECTIONS

Section

PART I — GENERAL

1. Vesting of all land in the State.
2. Control and management of land; advisory bodies.
3. Designation of urban areas.
4. Applicable law for the interim management of land.

PART II — PRINCIPLES OF LAND TENURE, POWERS OF MILITARY GOVERNOR AND LOCAL GOVERNMENTS, AND RIGHTS OF OCCUPIERS

5. Powers of the Military Governor in relation to land.
6. Powers of Local Government in relation to land not in urban areas.
7. Restrictions on rights of persons under age of 21.
8. Special contracts.
9. Certificates of occupancy.
10. Conditions and provisions implied in certificates of occupancy.
11. Power of Military Governor or public officer to enter and inspect land and improvements.
12. Power of Military Governor to grant licences to take building materials.

13. Duty of occupier of statutory right of occupancy to maintain beacons.
14. Exclusive rights of occupiers.
15. The right to improvements.

PART III — RENTS

16. Principles to be observed in fixing and revising rent.
17. Power of Military Governor to grant rights of occupancy free of rent or at reduced rent.
18. Acceptance of rent not to operate as a waiver of forfeiture.
19. Penal rent.
20. Additional penal rent for unlawful alienation.

PART IV — ALIENATION AND SURRENDER OF RIGHTS OF OCCUPANCY

21. Prohibition of alienation of customary right of occupancy except with requisite consent or approval.
22. Prohibition of alienation of statutory right of occupancy without consent of Military Governor.
23. Sub-under-leases.

ARRANGEMENT OF SECTIONS - *continued**Section*

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| <p>24. Devolution of rights of occupancy on death.</p> <p>25. Effect of deed or will where non-customary law applies.</p> <p>26. Null and void transactions and instruments.</p> <p>27. Surrender of statutory rights of occupancy.</p> <p style="text-align: center;">PART V – REVOCATION OF RIGHTS OF OCCUPANCY AND COMPENSATION THEREFOR</p> <p>28. Power of Military Governor to revoke rights of occupancy.</p> <p>29. Compensation payable on revocation of right of occupancy by Military Governor in certain cases.</p> <p>30. Reference of dispute as to compensation.</p> <p>31. Exclusion of the application of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976</p> <p>32. Debt due to Government not extinguished by revocation.</p> <p>33. Option to accept re-settlement in case of revocation of right of occupancy.</p> <p style="text-align: center;">PART VI – TRANSITIONAL AND OTHER RELATED PROVISIONS</p> <p>34. Transitional provisions on land in urban areas.</p> <p>35. Compensation for improvements in certain cases.</p> | <p>36. Transitional provisions on land not in urban areas.</p> <p>37. Penalty for false claims, etc. in respect of land.</p> <p>38. Preservation of power of Military Governor to revoke rights of occupancy.</p> <p style="text-align: center;">PART VII – JURISDICTION OF HIGH COURTS AND OTHER COURTS</p> <p>39. Jurisdiction of High Courts.</p> <p>40. Special provisions in respect of pending proceedings.</p> <p>41. Jurisdiction of area courts or customary courts, etc.</p> <p>42. Proceedings for recovery of rent in respect of certificate of occupancy, etc.</p> <p style="text-align: center;">PART VIII – SUPPLEMENTAL</p> <p>43. Prohibition of penalties for unauthorised use of land.</p> <p>44. Service of notices.</p> <p>45. Delegation of powers.</p> <p>46. Power to make regulations.</p> <p>47. Exclusion of certain proceedings.</p> <p>48. Modification of existing laws.</p> <p>49. Exemption with respect to Federal Government lands, etc.</p> <p>50. Interpretation.</p> <p>51. Citation.</p> |
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Decree No. 6

[29th March 1978] Commence-
ment

WHEREAS it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law:

AND WHEREAS it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved:

NOW THEREFORE, THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows: —

PART I — GENERAL

1. Subject to the provisions of this Decree, all land comprised in the territory of each State in the Federation are hereby vested in the Military 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 Decree.

Vesting of all land in the State.

2. — (1) As from the commencement of this Decree —

(a) all land in urban areas shall be under the control and management of the Military Governor of each State; and

Control and management of land; advisory bodies.

(b) all other land shall, subject to this Decree, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated.

(2) There shall be established in each State a body to be known as "the Land Use and Allocation committee" which shall have responsibility for —

(a) advising the Military governor on any matter connected with the management of land to which paragraph (a) of subsection (1) above relates;

(b) advising the Military Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under this Decree; and

(c) determining disputes as to the amount of compensation payable under this Decree for improvements on land.

(3) The Land Use and Allocation committee shall consist of such number of persons as the Military Governor may determine and shall include in its membership —

(a) not less than two persons possessing qualifications approved for appointment to the public service as estate surveyors or land officers and who have had such qualification for not less than five years; and

(b) a legal practitioner.

(4) The committee shall be presided over by such one of its members as may be designated by the Military Governor and, subject to such directions as may be given in that regard by the Military Governor, shall have power to regulate its proceedings.

(5) There shall also be established for each Local Government a body to be known as "the Land Allocation Advisory Committee" which shall consist of such persons as may be determined by the Military governor acting after consultation with the Local Government and shall have responsibility for advising the Local Government on any matter connected with the management of land to which paragraph (b) of subsection (1) above relates.

3. Subject to such general conditions as may be specified in that behalf by the National Council of States, the Military Governor may for the purposes of this Decree by order published in the *State Gazette* designate the parts of the area of the territory of the State constituting land in an urban area.

4. Until other provisions are made in that behalf and, subject to the provisions of this Decree, land under the control and management of the Military Governor under this Decree shall be administered –

(a) in the case of any State where the Land Tenure Law of the former Northern Nigeria applies, in accordance with the provisions of that Law; and

(b) in every other case, in accordance with the provisions of the State Land Law applicable in respect of State land in the State,

and the provisions of the Land Tenure Law or the State Land Law, as the case may be, shall have effect with such modifications as would bring those Laws into conformity with this Decree or its general intendment.

PART II – PRINCIPLES OF LAND TENURE, POWERS OF MILITARY GOVERNOR AND LOCAL GOVERNMENTS, AND RIGHTS OF OCCUPIERS

5. – (1) It shall be lawful for the Military Governor in respect of land, whether or not in an urban area –

(a) to grant statutory rights of occupancy to any person for all purposes;

- (b) to grant easements appurtenant to statutory rights of occupancy;
 (c) to demand rental for any such land granted to any person;

(d) to revise the said rental –

(i) at such intervals as may be specified in the certificate of occupancy; or

(ii) where no intervals are specified in the certificate of occupancy at any time during the term of the statutory right of occupancy;

(e) to impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land the subject of the certificate of occupancy and to revise such penal rent as provided in section 19;

(f) to impose a penal rent for a breach of any condition, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of occupancy or any part thereof by sale, mortgage, transfer of possession, sub-lease or bequest or otherwise howsoever without the prior consent of the Military Governor.

(g) to waive, wholly or partially, except as otherwise prescribed, all or any of the covenants or conditions to which a statutory right of occupancy is subject where, owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder;

(h) to extend except as otherwise prescribed, the time to the holder of a statutory right of occupancy for performing any of the conditions of the right of occupancy upon such terms and conditions as he may think fit.

(2) Upon the grant of a statutory right of occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.

6. – (1) It shall be lawful for a Local Government in respect of land not in an urban area –

(a) to grant customary rights of occupancy to any person or organisation for the use of land in the Local Government area for agricultural, residential and other purposes;

(b) to grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other

Powers of
Local
Government
in relation to
land not in
urban areas.

purposes ancillary to agricultural purposes as may be customary in the Local Government area concerned.

(2) No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Military Governor.

(3) It shall be lawful for a Local Government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not --

(a) land within an area declared to be an urban area pursuant to section 3 of this Decree;

(b) the subject of a statutory right of occupancy;

(c) within any area compulsorily acquired by the Government of the Federation or of the State concerned;

(d) the subject of any laws relating to minerals or mineral oils,

and for the purpose to revoke any customary right of occupancy on any such land.

(4) The Local Government shall have exclusive rights to the lands so occupied against all persons except the Military Governor.

(5) The holder and the occupier according to their respective interests of any customary right of occupancy revoked under subsection (3) shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

(6) Where land in respect of which a customary right of occupancy is revoked under this Decree was used for agricultural purposes by the holder, the Local Government shall allocate to such holder alternative land use for the same purpose.

(7) If a Local Government refuses or neglects within a reasonable time to pay compensation to a holder and an occupier according to their respective interests under the provisions of subsection (5), the Military Governor may proceed to the assessment of compensation under section 29 and direct the Local Government to pay the amount of such compensation to the holder and occupier according to their respective interests.

7. It shall not be lawful for the Military Governor to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of twenty-one years:

Restriction
on rights of
persons
under age of
21.

Provided that --

(a) where a guardian or trustee for a person under that age of 21 has been duly appointed for such purpose the Military Governor may grant or consent to the assignment or subletting of a statutory right of occupancy to such guardian or trustee on behalf of such person under age;

(b) a person under the age of twenty-one years upon whom a statutory right of occupancy devolves on the death of the holder shall have the same liabilities and obligations under and in respect of his right of occupancy as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him.

8. Statutory right of occupancy granted under the provisions of section 5 (1) (a) shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Military Governor and the holder not being inconsistent with the provisions of this Decree. Special contracts.

9. - (1) It shall be lawful for the Military Governor -

(a) when granting a statutory right of occupancy to any person; or

Certificates
of occupancy.

(b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or

(c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy.

(2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefor by the person in whose name it is issued, such fee (if any) as may be prescribed.

(3) If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses or neglects to accept and pay for the certificate, the Military Governor may cancel the certificate and recover from such person any expenses incidental thereto, and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (a) of subsection (1) the Military Governor may revoke the statutory right of occupancy.

(4) The terms and conditions of a certificate of occupancy granted under this Decree and which has been accepted by the holder shall be enforceable against the holder and his successors in title, notwithstanding that the acceptance of such terms and conditions is not evidenced by the signature of the holder or is evidenced by the signature only or, in the case of a corporation, is evidenced by the signature only of some person purporting to accept on behalf of the corporation.

10. Every certificate of occupancy shall be deemed to contain provisions to the following effect –

Conditions and provisions implied in certificate of occupancy.

(a) that the holder binds himself to pay to the Military Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;

(b) that the holder binds himself to pay to the Military Governor the rent fixed by the Military Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16.

11. The Military Governor or any public officer duly authorised by the Military Governor in that behalf shall have the power to enter upon and inspect the land comprised in any statutory right of occupancy or any improvements effected thereon at any reasonable hours in the day time and the occupier shall permit and give free access to the Military Governor or any such officers to enter and inspect.

Power of Military Governor or public officer to enter and inspect land and improvements.

12. – (1) It shall be lawful for the Military Governor to grant a licence to any person to enter upon any land which is not the subject of a statutory right of occupancy or of a mining lease, mining right or exclusive prospecting licence granted under the Minerals Act or any other enactment, and remove or extract therefrom any stone, gravel, clay, sand or other similar substance (not being a mineral within the meaning assigned to that term in the Minerals Act) that may be required for building or for the manufacture of building materials.

Power of Military Governor to grant licences to take building materials.

(2) Any such licence may be granted for such period and subject to such conditions as the Military governor may think proper or as may be prescribed.

(3) No such licence shall be granted in respect of an area exceeding 400 hectares.

(4) It shall not be lawful for any licensee to transfer his licence in any manner whatsoever without the consent of the Military Governor first had and obtained, and any such transfer effected without the consent of the Military Governor shall be null and void.

(5) The Military Governor may cancel any such licence if the licensee fails to comply with any of the conditions of the licence.

13. – (1) The occupier of a statutory right of occupancy shall at all times maintain in good and substantial repair to the satisfaction of the Military Governor, or of such public officer as the Military Governor may appoint in that behalf, all beacons or other land marks by which the boundaries of the land comprised in the statutory right of occupancy are defined and in default of his doing the Military Governor or such public

Duty of occupier of statutory right of occupancy to maintain beacons.

officer as aforesaid may by notice in writing require the occupier to define the boundaries in the manner and within the time specified in such notice.

14. Subject to the other provisions of this Decree and of any laws relating to wayleaves, to prospecting for minerals or mineral oils or to mining or to oil pipelines and subject to the terms and conditions of any contract made under section 8, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Military Governor. Exclusive rights of occupiers.

15. During the term of a statutory right of occupancy the holder – The right to improvements.
(a) shall have the sole right to and absolute possession of all the improvements on the land;

(b) may, subject to the prior consent of the Military Governor, transfer, assign or mortgage any improvements on the land which have been effected pursuant to the terms and conditions of the certificate of occupancy relating to the land.

PART III- RENTS

16. In determining the amount of the original rent to be fixed for any particular land and the amount of the revised rent to be fixed on any subsequent revision of rent, the Military governor – Principles to be observed in fixing and revising rents.

(a) shall take into consideration the rent previously fixed in respect of any other like land in the immediate neighbourhood, and shall have regard to all the circumstances of the case;

(b) shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital.

17. – (1) The Military Governor may grant a statutory right of occupancy free of rent or at a reduced rent in any case in which he is satisfied that it would be in the public interest to do so. Power of Military Governor to grant rights of occupancy free of rent or at reduced rent.

(2) Where a statutory right of occupancy has been granted free of rent the Military Governor may, subject to the express provisions of the certificate of occupancy, nevertheless impose a rent in respect of the land the subject of the right of occupancy if and when he may think fit.

18. Subject to the provisions of sections 20 and 21, the acceptance by or on behalf of the Military Governor of any rent shall not operate as a waiver by the Military Governor of any forfeiture accruing by reason of the breach of any covenant or condition, express or implied, in any certificate of occupancy granted under this Decree. Acceptance of rent not to operate as a waiver of forfeiture.

Land Use

1978 No.6

19. - (1) When in any certificate of occupancy the holder has covenanted to develop or effect improvements on the land the subject of the certificate of occupancy and has committed a breach of such covenant the Military Governor may - Penal rent.

(a) at the time of such breach or at any time thereafter, so long as the breach remains unremedied, fix a penal rent which shall be payable for twelve months from the date of such breach; and

(b) on the expiration of twelve months from the date of such breach and on the expiration of every subsequent twelve months so long as the breach continues revise the penal rent to be paid.

(2) Such penal rent or any revision thereof shall be in addition to the rent reserved by the certificate of occupancy and shall be recoverable as rent:

Provided that the first penal rent fixed shall not exceed the rent so reserved and any revised penal rent shall not exceed double the penal rent payable in respect of the twelve months preceding the date of revision.

(3) If the Military Governor fixes or revises a penal rent he shall cause a notice in writing to be sent to the holder informing him of the amount thereof and the rent so fixed or revised shall commence to be payable one calendar month from the date of the receipt of such notice.

(4) If the breach for which a penal rent has been imposed is remedied before the expiration of the period for which such rent has been paid, the Military Governor may in his discretion refund such portion of the penal rent paid for such period as he may think fit.

(5) The fact that a penal rent or a revised penal rent has been imposed shall not preclude the Military Governor, in lieu of fixing a subsequent penal rent, from revoking the statutory right of occupancy:

Provided that the statutory right of occupancy shall not be revoked during the period for which a penal rent has been paid.

20. - (1) If there has been any breach of any of the provisions of section 22 or 23 the Military Governor may in lieu of revoking the statutory right of occupancy concerned demand that the holder shall pay an additional and penal rent for and in respect of each day during which the land the subject of the statutory right of occupancy or any portion thereof or any buildings or other works erected thereon shall be or remain in the possession, control or occupation of any person whomsoever other than the holder. Additional
penal rent
for unlawful
alienation.

(2) Such additional and penal rent shall be payable upon demand and shall be recoverable as rent.

(3) The acceptance by or on behalf of the Military Governor of any such additional and penal rent shall not operate as a waiver by the Military Governor of any breach of section 22 or 23 which may continue after the date up to and in respect of which such additional and penal rent has been paid or is due and owing and the Military Governor shall accordingly be entitled to exercise in respect of any such continuing breach all or any of the powers conferred upon him by this Decree.

PART IV – ALIENATION AND SURRENDER OF RIGHTS OF OCCUPANCY

21. It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever –

(a) 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; or

(b) in other cases without the approval of the appropriate Local Government.

Prohibition of alienation of customary right of occupancy except with requisite consent or approval.

22. 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 thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Military Governor first had and obtained:

Provided that the consent of the Military Governor –

(a) shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Military Governor;

(b) shall not be required to the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the Military Governor;

(c) to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.

Prohibition of alienation of statutory right of occupancy without consent of Military Governor.

(2) The Military Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or

sub-lease and the holder shall when so required deliver the said instrument to the Military Governor in order that the consent given by the Military Governor under subsection (1) may be signified by endorsement thereon.

23. - (1) A sub-lessee of a statutory right of occupancy may, with the prior consent of the Military Governor and with the approval of the holder of the statutory right of occupancy, demise by way of sub-underlease to another person the land comprised in the sub-lease held by him or any portion of the land. Sub-underleases.

(2) The provisions of subsection (2) of section 22 shall apply *mutatis mutandis* to any transaction effected under subsection (1) of this section as if it were a sub-lease granted under section 22.

24. The devolution of the rights of an occupier upon death shall -

(a) in the case of a customary right of occupancy, unless non customary law or any other customary law applies be regulated by the customary law existing in the locality in which the land is situated; and Devolution of rights of occupancy on death.

(b) in the case of a statutory right of occupancy (unless any non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:

Provided that -

(a) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law;

(b) a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Military Governor.

25. In the case of the devolution or transfer of rights to which any non-customary law applies, no deed or will shall operate to create any proprietary right over land except that of a plain transfer of the whole of the rights of occupation over the whole of the land. Effect of deed or will where non-customary law applies.

26. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Decree shall be null and void. Null and void transactions and instruments.

27. The Military Governor may accept on such terms and conditions as

he may think proper the surrender of any statutory right of occupancy granted under this Decree.

Surrender of statutory rights of occupancy.

PART V – REVOCATION OF RIGHTS OF OCCUPANCY AND COMPENSATION THEREFOR

28. – (1) It shall be lawful for the Military Governor to revoke a right of occupancy for overriding public interest.

Power of Military Governor to revoke rights of occupancy.

(2) Overriding public interest in the case of a statutory right of occupancy means –

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Decree or of any regulations made thereunder;

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

(3) Overriding public interest in the case of a customary right of occupancy means –

(a) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;

(c) the requirement of the land for the extraction of building materials;

(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(4) The Military Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the Head of the Federal Military Government if such notice declares such land to be required by the Government for public purposes.

(5) The Military Governor may revoke a statutory right of occupancy on the ground of –

(a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain;

(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8;

(c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of section 9.

(6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Military Governor and notice thereof shall be given to the holder.

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) or on such later date as may be stated in the notice.

29. - (1) If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or in paragraph (a) or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

Compensation payable on revocation of right of occupancy by Military Governor in certain cases.

(2) If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.

(3) If the holder or the occupier entitled to compensation under this section is a community the Military Governor may direct that any compensation payable to it shall be paid -

(a) to the community; or

(b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or

(c) into some fund specified by the Military Governor for the purpose of being utilized or applied for the benefit of the community.

(4) Compensation under subsection (1) of this section shall be, as respects -

(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) buildings, 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 determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;

(c) crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.

(5) Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in the like manner.

(6) Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is as respects –

(a) such land, on the basis specified in that subsection;

(b) any building, installation or improvement or crops thereon (or any combination of two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable,

and any interest payable under those provisions shall be computed in like manner.

(7) For the purposes of this section, "installation" means any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.

30. Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

Reference of
dispute as to
com-
pensation.

31. The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976 shall not apply in respect of any land vested in, or taken over by, the Military Governor or any Local Government pursuant to this Decree or the right of occupancy to which is revoke under the provisions of this Decree but shall continue to apply in respect of land compulsorily acquired before the commencement of this Decree.

Exclusion of the application of the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976.

1976 No. 33

32. The revocation of a statutory right of occupancy shall not operate to extinguish any debt due to the Government under or in respect of such right of occupancy.

Debt due to Government not extinguished by revocation.

33. - (1) Where right of occupancy in respect of any developed land on which a residential building has been erected is revoked under this Decree the Military Governor or the Local Government, as the case may be, may in his or its discretion offer in lieu of compensation payable in accordance with the provisions of this Decree resettlement in any other place or area by way of a reasonable alternative accommodation (if appropriate in the circumstances).

Option to accept resettlement in case of revocation of right of occupancy.

(2) Where the value of any alternative accommodation as determined by the appropriate officer or the Land Use and Allocation Committee is higher than the compensation payable under this Decree the parties concerned may by agreement require that the excess in value in relation to the property concerned shall be treated as a loan which the person affected shall refund or repay to the Government in the prescribed manner.

(3) Where a person accepts a resettlement pursuant to subsection (1) of this section his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such person.

PART VI - TRANSITIONAL AND OTHER RELATED PROVISIONS

34. - (1) The following provisions of this section shall have effect in respect of land in an urban area vested in any person immediately before the commencement of this Decree.

Transitional provisions on land in urban areas.

(2) Where the land is developed the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Decree as if the holder of the land was the holder of a statutory right of occupancy issued by the Military Governor under this Decree.

(3) In respect of land to which subsection (2) of this section applies there shall be issued by the Military Governor on application to him in the prescribed form a certificate of occupancy if the Military Governor is

satisfied that the land was, immediately before the commencement of this Decree, vested in that person.

(4) Where the land to which subsection (2) of this section applies was subject to any mortgage, legal or equitable, or any encumbrance or interest valid in law such land shall continue to be so subject and the certificate of occupancy issued, shall indicate that the land is so subject, unless the continued operation of the encumbrance or interest would in the opinion of the Military Governor be inconsistent with the provisions, or general intendment of this Decree.

(5) Where on the commencement of this Decree the land is undeveloped, then –

(a) one plot or portion of the land not exceeding half hectare in area shall subject to subsection (6) below, continue to be held by the person in whom the land was so vested as if the holder of the land was the holder of a statutory right of occupancy granted by the Military Governor in respect of the plot or portion as aforesaid under this Decree; and

(b) all the rights formerly vested in the holder in respect of the excess of the land shall on the commencement of this Decree be extinguished and the excess of the land shall be taken over by the Military Governor and administered as provided in this Decree.

(6) Paragraph (a) of subsection (5) above shall not apply in the case of any person who was on the commencement of this Decree also the holder of any undeveloped land elsewhere in any urban area in the State and in respect of such person all his holdings of undeveloped land in any urban area in the State shall be considered together and out of the undeveloped land so considered together –

(a) one plot or portion not exceeding 1/2 hectare shall be taken over by the Military Governor and administered in accordance with this Decree and the rights formerly vested in the holder in respect of such land shall be extinguished.

(7) No land to which subsection (5) (a) or (6) above applies held by any person shall be further subdivided or laid out in plots and no such land shall be transferred to any person except with the prior consent in writing of the Military Governor.

(8) Any instrument purporting to transfer any undeveloped land in contravention of subsection (7) above shall be void and of no effect whatsoever in law and any party to any such instrument shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine of ₦5,000.

(9) In relation to land to which subsection (5) (a) or (6) (a) applies there shall be issued by the Military Governor on application therefor in the prescribed form a certificate of occupancy if the Military Governor is satisfied that the land was immediately before the commencement of this Decree vested in that person.

35. - (1) Section 34 of this section shall have effect notwithstanding that the land in question was held under a leasehold, whether customary or otherwise, and formed part of an estate laid out by any person, group or family in whom the leasehold interest or reversion in respect of the land was vested immediately before the commencement of this Decree, so however that if there has been any improvements on the land effected by the person, group or family in whom the leasehold interest or reversion was vested as aforesaid the Military Governor shall, in respect of the improvements, pay to that person, group or family compensation computed as specified in section 29 of this Decree.

Transitional provisions on land not in urban areas..

(2) There shall be deducted from the compensation payable under subsection (1) of this section any levy by way of development or similar charges paid in respect of the improvements on the land by the lessee to the person, group or family in whom the leasehold interest or reversion was vested and the amount to be deducted shall be determined by the Military Governor taking into consideration all the circumstances of the case.

36. - (1) The following provisions of this section shall have effect in respect of land not in an urban area which was immediately before the commencement of this Decree held or occupied by any person.

Compensation for improvements in certain cases.

(2) Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this Decree being used for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the customary law of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

(3) On the production to the Local Government by the occupier of such land, at his discretion, of a sketch or diagram or other sufficient description of the land in question and on application therefor in the prescribed form the Local Government shall if satisfied that the occupier or holder was entitled to the possession of such land whether under customary rights or otherwise howsoever, and that the land was being used for agricultural purposes at the commencement of this Decree register the holder or occupier as one to whom a customary right of occupancy had been issued in respect of the land in question.

(4) Where the land is developed, the land shall continue to be held by the person whom it was vested immediately before the commencement of

this Decree as if the holder of the land was the holder of a customary right of occupancy issued by the Local Government, and if the holder or occupier of such developed land, at his discretion, produces a sketch or diagram showing the area of the land so developed the Local Government shall if satisfied that that person immediately before the commencement of this Decree has the land vested in him register the holder or occupier as one in respect of whom a customary right of occupancy has been granted by the Local Government.

(5) No land to which this section applies shall be sub-divided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid.

(6) Any instrument purporting to transfer any land to which this section relates shall be void and of no effect whatsoever in law and every party to any such instrument shall be guilty of an offence and shall on conviction to a fine of ₦5,000 or to imprisonment for 1 year.

37. If any person other than one in whom any land was lawfully vested immediately before the commencement of this Decree enters any land in purported exercise of any right in relation to possession of the land or makes any false claim in respect of the land to the Military Governor or any Local Government for any purpose under this section, he shall be guilty of an offence and liable on conviction to an imprisonment for one year or to a fine of ₦5,000.

Penalty for false claims, etc. in respect of land.

38. Nothing in this Part shall be construed as precluding the exercise by the Military Governor or as the case may be the Local Government concerned of the powers to revoke, in accordance with the applicable provisions of this Decree, rights of occupancy, whether statutory or customary, in respect to any land to which this Part relates.

Preservation of power of Military Governor to revoke rights of occupancy.

PART VII – JURISDICTION OF HIGH COURTS AND OTHER COURTS

39. – (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings: –

Jurisdiction of High Courts.

(a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Military Governor or deemed to be granted by him under this Decree; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a statutory right of occupancy;

(b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Decree.

(2) All laws including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.

40. Where on the commencement of this Decree proceedings had been commenced or were pending in any court or tribunal (whether at first instance or on appeal) in respect of any question concerning or pertaining to title to any and or interest therein such proceedings may be continued and be finally disposed of by the court concerned but any order or decision of the court shall only be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provided in this Decree.

Special provisions in respect of pending proceedings.

41. An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Decree; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be give to this section.

Jurisdiction of area courts or customary courts, etc.

42. — (1) Proceedings for the recovery of rent payable in respect of any certificate of occupancy may be taken before a Magistrates Court of competent jurisdiction by and in the name of the Chief Lands Officer or by and in the name of any other officer appointed by the Military Governor in that behalf.

Proceedings for recovery of rent in respect of certificate of occupancy, etc.

(2) Proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the Local Government concerned in the area court or customary court or any court of equivalent jurisdiction.

PART VIII - SUPPLEMENTAL

43. — (1) Save as permitted under section 34 of this Decree, as from the commencement of this Decree no person shall in an urban area —

Prohibition of and penalties for unauthorized use of land.

(a) erect any building, wall, fence or other structure upon; or

(b) enclose, obstruct, cultivate or do any act on or in relation to,

any land which is not the subject of a right of occupancy or licence lawfully held by him or in respect of which he has not received the permission of the Military Governor to enter and erect improvements prior to the grant to him of a right of occupancy.

(2) Any person who contravenes any of the provisions of subsection (1) shall on being required by the Military Governor so to do and within the period of time fixed by the Military Governor, remove any building, wall, fence, obstruction, structure or thing which he may have caused to be placed on the land and he shall put the land in the same condition as nearly as may be in which it was before such contravention.

(3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦5,000.

(4) Any person who fails or refuses to comply with a requirement made by the Military Governor under subsection (2) shall be guilty of an offence and liable on conviction to a fine of ₦100 for each day during which he makes default in complying with the requirement of the Military Governor.

44. Any notice required by this Decree to be served on any person shall be effectively served on him – Service of notices.

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode of that person; or

(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or

(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

45. – (1) The Military Governor may delegate to the State Commissioner all or any of the powers conferred on the Military Governor by this Decree, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intendment, of this Decree as the Military Governor may specify. Delegation of powers.

(2) Where the power to grant certificates has been delegated to the State Commissioner such certificates shall be expressed to be granted on behalf of the Military Governor.

46. – (1) The National Council of States may make regulations for the purpose of carrying this Decree into effect and particularly with regard to the following matters – Power to make regulations.

(a) the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians;

(b) the terms and conditions upon which special contracts may be made under section 8;

(c) the grant of certificates of occupancy under section 9;

(d) the grant of temporary rights of occupancy;

(e) the method of assessment of compensation for the purposes of section 29 of this Decree.

(2) The Military Governor may, subject to subsection (1) make regulations with regard to the following matters: –

(a) the method of application for any licence or permit and the terms and conditions under which licences may be granted;

(b) the procedure to be observed in revising rents;

(c) the fees to be paid for any matter or thing done under this Decree;

(d) the forms to be used for any document or purpose.

47. – (1) This Decree shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federation or of a State and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into: – Exclusion of certain proceedings.

(a) any question concerning or pertaining to the vesting of all land in the Military Governor in accordance with the provisions of this Decree;
or

(b) any question concerning or pertaining to the right of the Military Governor to grant a statutory right of occupancy in accordance with the provisions of this Decree; or

Land Use

1978 No.6

1978 No.6

question concerning or pertaining to the right of a Local
to grant a customary right of occupancy under this Decree.

court shall have jurisdiction to inquire into any question
relating to the amount or adequacy of any compensation paid
under this Decree.

existing law relating to the registration of title to, or interest
in the transfer of title to or any interest in land shall have effect
and modifications (whether by way of addition, alteration or
omission) shall bring those laws into conformity with this Decree or its
provisions.

Modifica-
tion of
existing laws.

Nothing in this Decree shall affect any title to land
vested or undeveloped held by the Federal Government or any
State Government at the commencement of this Decree and,
such land shall continue to vest in the Federal Government or
State Government.

Exemption
with respect
to Federal
Government
lands, etc.

In this section, "agency" includes any statutory corporation or any
body (whether corporate or unincorporate) or any company
controlled by the Federal Government.

In this Decree, unless the context otherwise requires: —
"agricultural purposes" includes the planting of any crops of economic

Interpreta-
tion

"Chief Lands officer" means the Chief Lands officer of a State and in
the Federal Capital Territory means the Chief Federal
Lands officer;

"right of occupancy" means the right of a person or
body lawfully using or occupying land in accordance with
the law and includes a customary right of occupancy granted by a
government under this Decree;

"improved land" means land where there exists any physical
improvement in the nature of road development services, water,
drainage, building, structure or such improvement that may
increase the value of the land for industrial, agricultural or residential

"right of usufruct" means a right annexed to land to utilize other land in
a particular manner (not involving the taking of
the natural produce of that land or of any part of its soil) or
the holder of the other land from utilizing his land in a
particular manner;

consideration or the

operations as are
in the area;

concerned;

a person entitled
whom a right of
has been passed on the
whom a right of
has been assigned, nor

means anything of
value resulting from
any person acting
in planting or growing
crops, but does
not include growing

to be payable at the
of Nigeria will

Government or any
State Government as
mentioned in question is

of the State

fair and equitable

under customary
law or with customary
holder;

public use;

"Government" means the Government of the Federation or the government of a State;

"grazing purposes" includes only such agricultural operations as are required for growing fodder for livestock on the grazing area;

"High Court" means the High Court of the State concerned;

"holder" in relation to a right of occupancy, means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly assigned or has validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without a valid assignment, nor a mortgagee, sub-lessee or sub-underlessee;

"improvements" or "unexhausted improvements" means anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and includes buildings, plantations of longlived crops or trees, fencing, wells, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce;

"interest at the bank rate" means a simple interest payable at the rate per cent per annum at which the Central Bank of Nigeria will rediscount bills of exchange;

"Local Government" means the appropriate Local Government or any other body having or exercising the powers of a Local Government as provided by law in respect of the area where the land in question is situated;

"Military Governor" means the Military Governor of the State concerned;

"mortgage" includes a second and subsequent mortgage and equitable mortgage;

"occupier" means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-lessee or sub-underlessee of a holder;

"public purposes" includes –

(a) for exclusive Government use or for general public use;

(b) for use by any body corporate directly established by law or by any body corporate registered under the Companies Decree 1968 as respects which the Government owns shares, stocks or debentures;

(c) for or in connection with sanitary improvements of any kind;

(d) for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government;

(e) for obtaining control over land required for or in connection with development of telecommunications or provision of electricity;

(f) for obtaining control over land required for or in connection with mining purposes;

(g) for obtaining control over land required for or in connection with planned urban or rural development or settlement;

(h) for obtaining control over land required for or in connection with economic, industrial or agricultural development;

(i) for educational and other social services;

"statutory right of occupancy" means a right of occupancy granted by the Military Governor under this Decree;

"urban area" means such area of the State as may be designated as such by the Military Governor pursuant to section 3 of this Decree;

"sub-lease" includes a sub-underlessee.

(2) The powers of a Military Governor under this Decree shall, in respect of land comprised in the Federal Capital Territory or any land held or vested in the Federal Government in any State, be exercisable by the Head of the Federal Military Government or any Federal commissioner designated by him in that behalf and references in this Decree to Military Governor shall be construed accordingly.

51. This Decree may be cited as the Land Use Decree 1978.

Citation.

MADE at Lagos this 29th day of March 1978.

LT-GENERAL O. OBASANJO,
*Head of the Federal Military Government,
 Commander-in-Chief of the Armed Forces,
 Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport)

The Decree vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Military Governor of the State who would hold such land in trust for the people. The Military Governor would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State or to organisations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments.

Provision is made in the Decree for the establishment in each State of a Land Use and Allocation Committee (composed of at least two estate surveyors or land officers, a legal practitioner and some other members representing community interests) with advisory functions and power to determine disputes as to the amount of compensation payable for improvements upon revocation of certificates of occupancy. Each Local Government would also set up a Land Allocation Advisory Committee but with a purely advisory role.

The other provisions relate to designation of urban areas; statutory and customary rights of occupancy; issue and revocation of certificates of occupancy and sundry matters.

ENDNOTES

1. World Bank report (1989).
2. See, for example, World Bank (1982); USDA (1981); Harrison (1987); Gakou (1987); Ravenhill (1986).
3. See Watts (1987b); Watts and Bassett (1985); Berry (1985); Bashir (1986); Iyegha (1988); Shenton (1987); World Bank (1979).
4. See World Bank (1981); Hart (1982); Bates (1981); Hyden (1980); Dunn (1978). For discussions specific to Nigeria, see Watts (1987); Watts and Shenton (1984); Berry (1985); Beckman (1985); discussion summarized in Myers (1990, pp. 22-24).
5. James (1976, 1982); Elias (1951); Nwabueze (1972); Omotola (1982, 1985); Yakubu (1985).
6. Allott (1984); Woodman (1969, 1985); Benda-Beckmann (1984); Gluckman (1969); Roberts (1984).
7. Atteh (1985); Famoriyo (1973); Ault and Rutman (1979); Kuper and Kuper (1965); Cohen and Koehn (1977).
8. For a few examples of research that connects these processes, see Comaroff (1977, 1980); Comaroff and Roberts (1981); Peters (1983); Werbner (1982).
9. Three of the seven farmers selected were not interviewed. One man would not speak to me after repeated attempts, one man I refused to speak to after two severe confrontations, and the last individual was never located.
10. In this discussion the term "registered farmers" refers to the commercial farmers who have some registered farmland, though they may have other land which is not registered. "Nonregistered farmers" refers to the commercial farmers who have no registered farmland.
11. Lloyd (1962); Bender (1970, 1971); Berry (1975); Vanden Driesen (1971); and Francis (1984, 1987) have all described indigenous or customary land tenure in southwest Nigeria in detail.
12. Any analysis of Nigeria's economic and agricultural conditions must begin with a caution concerning the quality and availability of data. Aggregate data in Nigeria are usually

either unavailable or unreliable (Berry 1984; Watts 1987b, 1989; *Economist*, 31 January 1982, p. 4).

13. See discussions on the "Dutch disease" by Roemer (1983) and Richards (1987).

14. SFEM was later named FEM and is now called the Interbank Foreign Exchange Market, or IFEM.

15. In 1977, to encourage formal lending agencies to grant loans to farmers, particularly small-scale farmers, the government set up the Agricultural Credit and Guarantee Scheme (ACGS). The scheme, initially funded with 100 million naira, was designed to guarantee up to 75 percent of a loan granted by banks for agricultural purposes. Despite the creation of the ACGS, peasant farmers were still unsuccessful in obtaining loans from the formal credit sector (see Okorie 1987, 1988; *Daily Times*, 6 May 1988, p. 2; Myers 1990, pp. 134-35).

Since banks were still denying loans to peasant farmers, the government-owned Nigerian Agricultural and Credit Bank (NACB) was designed to grant loans of up to 5,000 naira directly to small-scale farmers. The only criterion was that the applicants be full-time farmers. Proof of landownership, including a Certificate of Occupancy (that is, land registration) and the minimum 10 percent applicant contribution to total project cost were both waived as security requirements. However, the scheme has also had limited success. There have been reports that participating banks continue to require collateral or deposits of up to 500 naira (*National Concord*, 1 September 1988, p. 2). It has also been reported that banks still do not find this type of business profitable and hence abstain from participating.

16. The loans range from 50 to 2,000 naira and carry a 5 percent interest charge. They are obtainable without collateral and must be repaid within one year.

17. See Meek (1957); Shenton (1987); Famoriyo, Fabiyi, and Gandonu (1977); Lugard (1911, 1965); Francis (1984); Watts (1983); Omotola (1988); Udo (1985). Summarized in Myers (1990, pp. 154-57).

18. The judge ruled that the crown did not have proprietary ownership in the land of a ceded colony even if the instrument of cession uses language that may lend an operative clause to such a legal interpretation (Omotola 1990, p. 15). Elias (1962, pp. 223-24, cited in Omotola, p. 15) wrote: "Whatever else is transferred or surrendered to the Crown under the Treaty of Cession, the radical title in the land remained in the local inhabitants as if no change of sovereignty had taken place."

19. See Ward-Price (1939); Meek (1949); Galletti, Baldwin, and Dina (1956); and Berry (1975, 1985).

20. See the Native Lands Acquisition Ordinance of 1908 and the Public Lands Acquisition Ordinance of 1917.

21. Simpson (1957); Glover (1960); Western Nigeria (1962); Elias (1962); and Uchendu (1967).

22. Adegboye (1964, 1966, 1967); Adigun (1961); Oluwasanmi (1966); Famoriyo (1972, 1973, 1979); Adeniyi (1972a, 1972b); Fabiyi (1974); Osuntogun (1976); Ike (1977, 1986); and Nigeria (1970, 1975).

23. Personal communication (August 1988); see also the *Political Bureau Report* (Nigeria 1987a).

24. Nigeria (1987a); Famoriyo (1984); Omotola (1988); Udo (1985); Atteh (1985).

25. The better ones are by Atteh (1985); Fabiyi (1984, 1988); Famoriyo (1985); Oduniyi (1981); and Okpala (1982). A recent study by Osemwota (1989) considers the opinions of traditional authorities about the impact of the Act.

26. See Udo (1985); Francis (1984); Nnamani (1989); Omotola (1982, 1985); James (1982, 1987); Yakubu (1985); discussion summarized in Myers (1990, pp. 200-206).

27. Francis (1984) argued that tenants were less secure and many were pushed off the land. Landlords were also less secure as a result of the law and often used tenants to prove or maintain their control over land. If a tenant is on the land, the owner's security is greatly enhanced.

28. I discovered that many of the academics, administrators, lawyers, bureaucrats, and others interviewed selectively comply or respond to the provisions of the law. Most interviewed had individual farms or access to family land. None of them had registered their farmland, although several had registered their urban residential plots. One of the senior lands officers commented that it was not necessary for him to register his farm plots because "everyone knows whose land is whose."

29. The registration process is much the same in Ogun and Ondo States (see Fabiyi 1984) as it is in Oyo State. The steps in all three states include the following:

- (1) The applicant acquires the appropriate forms at the Lands Office. The fee for the application forms ranges from 10 to 25 naira. The forms are completed and submitted with several other documents, as described below.
- (2) The applicant must provide proof of title (even though the state claims superior title under the Act and even if the applicant has possession of the land). Title may be in the form of the original bill of sale or transfer, a conveyance

certificate, or a letter from the local elders or chiefs attesting that the land belongs to the applicant. In some cases this letter must be approved by a lawyer and/or the local government. In all cases the proof of ownership must be dated prior to March 1978.

- (3) The applicant must provide proof of tax payment for the previous three years. Proof is in the form of a Tax Clearance Certificate. Three copies are required.
- (4) The applicant must have the land surveyed. The original of the plan and eight copies must be submitted. The applicant can request that the Ministry survey the land, but this may take quite some time. If the applicant wants to hasten the process he may contact an "outside" surveyor, who in any case usually works for the Ministry. The fee for an outside survey is much higher.
- (5) The application is posted by the Ministry in local newspapers for thirty days. If there is no objection the process continues. If anyone objects to the application, the conflict must be resolved before the process can continue.
- (6) The applicant makes the first payment for processing the application and advertisement. The fee is 100 naira for agricultural land. There is also a 40 naira fee for inspection and charting. These fees are paid when the application, proof of title, survey, tax clearance, and two passport photos are submitted.
- (7) The application is then considered and processed by the Ministry. If approved it is sent on to the office of the governor or his designated representative. If the application is approved by the governor, a ground rent fee is assessed, which may or may not conform to the fees specified by the Ministry. The ground rent specified for a C of O for agricultural land is 150 naira plus 5 naira per hectare per year. The fee can be revised every five years. In March 1990 *Newswatch* reported that the government had raised the rates on various land transactions in Lagos State. A C of O application now costs 250 naira, where it used to cost 100 naira. The processing fee for applications went from 445 naira to 1,000 naira. It is unclear if these increases apply to agricultural land as well as residential and commercial land. The cost of publication went from 175 naira to 500 naira. It is also unclear whether the rate increases apply only to Lagos State or if they apply to other states as well.
- (8) After the rent is assessed, the application is returned to the Ministry where it is then registered in a deed registry. The applicant is notified that his certificate is available. The applicant pays the ground rent fees when he collects his certificate. Certificates of Statutory Right of Occupancy for agricultural land in Oyo State are issued for a term of ninety-nine years.

According to one lands officer in Oyo State, large commercial farmers may not register land because the cost of doing so is prohibitive. Originally the leases were for twenty-five years and the cost of rent was 25 naira per hectare. If a commercial farmer has 1,000 hectares, the cost of ground rent is too high. In 1985 the term of lease in Oyo State was increased to ninety-nine years and the rent was reportedly reduced to 5 naira per hectare.

30. There are many examples in the literature. If farmers are adamant about resisting government attempts to acquire land, projects often fail to get started or are derailed early on. Further, despite the law's provisions regarding compensation, farmers have been successful in demanding compensation above the value of unexhausted improvements. In April 1988 at the commissioning of the Tunga-Kawo Dam in Niger State, Babangida asked farmers to stop making unrealistic demands for compensation for land acquired by the government for the project.

31. I use the terms "peasant" and "commercial" to distinguish between two categories of farmers in this study. The people I characterize as commercial farmers share many characteristics that distinguish them from peasant farmers.

Commercial farmers engage in farming as a business enterprise. The commercial farmers in this study, all of whom are men, are largely absentee farmers. They do not live in the villages where their farms are located and they do not work the land themselves but, rather, hire and supervise labor to perform all tasks. These commercial farmers have primary occupations or businesses other than farming from which they draw their capital to invest in agriculture. Most of these individuals acquired the land they farm through purchase or lease. Some have commercial farming operations on family land, but most do not, for a variety of reasons. The land held by commercial farmers is located in rural areas that are not part of their home villages. Commercial farmers grow crops largely for exchange and not consumption; they often own or have access to farm equipment; and they all have vehicles to transport themselves and their produce to and from their farms.

In contrast, I use the term "peasant farmers" to designate those farmers who are largely engaged in peasant production and who live in the villages where they farm. Peasant farmers usually acquire their land through inheritance or rental. Farming is the primary occupation of the men peasant farmers. They have limited access to external capital, almost no access to formal sources of credit, and own little or no farm equipment. None of the farmers living in the three villages can presently afford to rent farm equipment. This description does not imply that all peasant producers engage only in peasant production. Many also engage in petty capitalist activities--they hire labor, rent land, and sell surplus production for profit. Others engage primarily in subsistence production. Within each village, as well as among villages, there is great diversity in the economic status and strategies of these farmers and their families. Some use income from other sources to invest in their farming operations. In either case, the scale of operation and/or the degree of commodification of peasant agricultural operations

was significantly less than the scale and degree of commodification of commercial farming operations.

A full discussion of these terms and the attributes of the farmers in these two categories appears in Myers (1990, pp. 248-51).

32. The Fulani and their tenure relationships with the villagers in Oluborode are discussed in Myers (1990).

33. The secondary occupations noted by the fifteen men included blacksmithing, carpentry, trading agricultural produce (as a middleman), and palm wine tapping. The Ibo man who was the palm wine tapper also worked cutting palm kernels for women. One man had driven a taxi in Lagos before returning to Oluborode to farm. Only the Igede man admitted to performing agricultural labor on farms that were not his own. His main occupation was agricultural laborer.

34. A five-day market is one that occurs every fifth day.

35. The data are variable. See Spiro (1980); Afonja (1981); Adekanye (1985); Olawoye (1985a, 1985b, personal communication 1988); Okuneye (1988).

I was told by informants in the three villages that some women market some of their husbands' crops, especially palm oil and processed food made from the crops. Some women also sell their husbands' crops in the market, though this is rare. Spiro (1987, p. 180) wrote that very few women sell crops on behalf of their husbands. Husbands prefer to sell their crops directly to middlemen or traders because "they were afraid that their wives would cheat them."

36. She argues that as cassava prices increased in the early 1970s women moved into farming. She says that women's farming increased substantially in the late 1970s and peaked around 1984 just before the plunge in cassava prices. Now she says that women have again increased their farming operations, coinciding with an increase in cassava prices. She also notes an additional reason for the increase in women's farming, a "tightening situation in processing and marketing," that is, more competition in these areas (Guyer, personal communication, 1988).

37. See Guyer (1988), who notes that farmers are cutting back because of the rising costs of labor and transportation, the increasing unavailability of transportation and spare parts, and the volatility of the market. See also Adeyemo (1984).

38. For example, one farmer in Oluborode who had been a taxi driver had sufficient capital both to expand his field crop farming operations and to plant new cocoa trees. He stated that he anticipated earning more in 1988 from his investment.

39. As noted earlier, a woman is prohibited from owning land in her husband's village. Further, unless they engage in trading or other commercial activities, few women have the financial resources needed to purchase land. However, women can and do rent land.

40. This information is not included in table 4.1; however, the following discussion incorporates the information I obtained regarding this issue from these farmers and others not included in the case study.

41. Dynamic changes are occurring in tenure arrangements and social relations in the southwest. As noted earlier, tenure is becoming more individualized and commodified. Individual rights and control are increasing at the expense of the family and lineage. In addition, fewer and fewer children or siblings are remaining in the villages to farm. Farmers may refer to a parcel as individual land when in fact it is family land. They do this because there is no one to challenge their control. The inverse holds true as well; farmers may refer to a parcel as family when in fact their control of the land would categorize it as individual.

42. Farmers did not have the same attitude toward palm trees. Although these self-generating trees are also vital sources of income, they do not require as much investment as do cocoa trees.

43. I use the term *mystique* here to refer to the cult of the law. The public discussion and propaganda surrounding the Act have conferred upon it "an awesome and mythical status." See "*mystique*," *American Heritage Dictionary* (1975, p. 868).

44. Farmer #2 is the late *bale* of Oluborode. He had an important political position, but he was not one of the wealthy farmers of the three villages.

45. A tin is approximately 4.5 gallons.

46. Nigerian currency was based on pounds sterling and shillings prior to independence. Many of the older farmers still use the term "shillings."

47. This means that 8,000 farmers were poised for conflict with regard to royalty payments.

48. This latter figure may not be representative of other villages since the data came from a state-sponsored agricultural scheme, the Ilora Farm Settlement in Oyo State.

49. Okuneye (1988) reported that 81.6 percent of the women interviewed in Oyo State received the land they farm from their husbands; 1.7 percent reported that they rented land; 1.7 percent said that their land was a gift; and 10 percent inherited the land. Women who receive land as a gift, inheritance, or even by lease may have greater security than do those who receive land from their husbands. However, even if a woman has inherited land she may not have absolute control over the goods she produces.

50. The women who acquire palm fruit in this way profit more than women who rely on their husbands for access to trees. When a woman uses the fruit from trees on her husband's land, he has control over most of the oil that is processed (although not over the less lucrative kernels).

51. This was suggested in interviews with many academics, bureaucrats, policy planners, and businessmen. But it should not be taken for granted that all new elite who engage in agricultural activities do so only on privately acquired, individualized holdings. The chairman of Iwo LGA is a prime example of the new elite who continue to use family land in their agricultural pursuits.

52. The terms "old elite" and "new elite" of course disguise the many gradations within each category (Myers 1990, p. 331). Yet despite conceptual difficulties associated with these terms, they are useful to this discussion.

53. However, one of the nonregistered farmers interviewed has a Ph.D. while one of the registered farmers had little formal Western education and spoke little English. The farmer who has a Ph.D. has had his land surveyed. The farmer who speaks no English has attended Koranic schools, comes from a "progressive" family, some of whom are well educated, and travels internationally.

54. Two other individuals with registered land who were not interviewed also funded their agricultural activities from salaried positions.

55. Case #3 of the registered farmers has plans in his prospectus to purchase vehicles (100,000 naira) and farm equipment (100,000 naira).

56. There may be a relationship between the types of activities and the use of or demand for farm equipment. For example, a registered farmer planning to start a fishery and piggery would have less need of a tractor than a farmer planning to focus on large-scale maize or sorghum production.

57. The individual who had all of his land surveyed stated that the results were recorded at "a government office in Ibadan." He felt secure that this survey was sufficient and would protect him in any type of land dispute. One of the nonregistered farmers who expressed a desire to register his land was the new elite businessman. The two farmers who had had their land surveyed were both members of the new elite class.

58. Some elite who are not interested in farming may also acquire and register farmland. However, I believe that these individuals will almost always be part of the new elite. My hypothesis is also supported from data gathered while in Nigeria in 1991. When interviewing several commercial farmers throughout the country, I found that those who had registered their land were part of the new elite, while those who had not registered were part of the old elite.

59. This observation was echoed at the University of Ibadan by Professor Janice Olowoye (personal communication, April 1988), who said that once the military leaves power those officers who acquired property by force or civilians who used inside contacts to secure property may face challenges to their newly acquired assets from the incoming regime. There is some documentary evidence to suggest that as each administration has come into power, many in the previous regime have had to relinquish spoils that they previously acquired. Moreover, Udo (1985) has argued that highly priced state land (in urban areas) became a point of conflict within the elite. Nepotism existed in the allocation of this land. Many individuals who received these parcels did not develop them but kept them for speculative purposes. They often paid less than 5,000 naira and resold them (usually a few years later) for between 30,000 and 40,000 naira. He noted that these plots are often the first targets of new regimes. They are taken or confiscated under the accusation of corruption, and then they are reallocated to the relatives and friends of the members of the new regime.

60. This is supported by evidence gathered in 1991. Most of the individuals interviewed who had registered land were either current or former civil servants.

61. Those who work for the state, particularly the military elite, high-ranking civil servants, and many of those charged with administering land and agricultural policy, have exploited their positions and benefited from the Act. There are few hard data available on this subject, although the papers occasionally report activities of the current regime. For example, the *Daily Times* (22 January 1988) ran an article that stated, "Top government officials . . . have acquired hectares of land to grow wheat and make money." *Agro-Food News* (July 1988, p. 3) ran a similar article that said, "The farmers stated that they were being 'influenced' to sell their land to some top government officials" (see also *Daily Times*, 20 February 1988). *Newswatch* (14 August 1989) reported that Gambo, Inspector General of the Police, owned a large farm in Gongola State. Colonel David Marks, Minister of Communications, acquired more than 200 hectares in Otukpo LGA, Benue State; this land is reportedly registered.

Many in past administrations used their authority to acquire land and set up businesses or agribusiness or to hold land for speculative purposes. For example, Udo (1985) noted that many army officers in the Gowon and Obasanjo administrations "found money to buy" large tracts of land in periurban areas. The land was held for speculative purposes. He suggests that the officers knew that the land was to be the later site of government or government-sponsored development projects. The land that was bought as agricultural land was later resold to the government as valuable urban commercial land.

62. The state has often procrastinated in remunerating or finding alternate land for those who have had land confiscated (Beckman 1985, 1988; Bashir 1986; Kolawole 1988; Wallace 1981b; Falola 1988; Myers 1990).

The literature and interviews suggest that in some cases peasant farmers have been successful in resisting state attempts compulsorily to acquire their land or, at the very least,

that some peasant farmers have been able to secure financial remuneration that more closely equals the value of the land.

The literature and interviews also suggest that the acquisition and remuneration processes are highly differentiated. Wealthier or more politically powerful rights-holders are more likely to be able to resist state acquisition if they so desire and to demand and receive adequate compensation than are those who are less well positioned (Beckman 1985, 1988; Bashir 1986; Kolawole 1988; Wallace 1981b; Falola 1988; *Concord*, 2 August 1988; *Newswatch*, May 1990).

63. Peasant landowners charge higher rents to commercial farmers because they can and also to protect themselves. Some of the farmers in the three villages researched noted that peasant farmers who rented land to commercial farmers charged higher prices because the commercial farmers can make big trouble that is often very costly. They noted that these commercial farmers may try to take the land by stating that they purchased it. Peasant farmers stated that these commercial farmers may say that the fees they paid were for acquisition and not rental and that rental arrangements are illegal under the Land Use Act. Higher rents let the commercial farmer know that the landowning family is concerned about what happens to the land and that the rent will help to pay for any necessary litigation. But these higher rates may also lend weight to commercial farmers' claims that the land was purchased and not rented.

64. All the same, case #4 feels somewhat insecure about the arrangement. He does not want to lose his investment in the land (between 1986 and 1988 he invested over 1,500 naira in labor alone to work the land), and he wants to expand production. He stated that he would like to have a written agreement with the family that states the period of the lease and the amount of rent. The family rejected his request, but some "more advanced" members of the family said that he could have "some kind of an agreement next year" (in 1989). In 1990 the family again denied his request for a written agreement. The family head said that it was not necessary because he was "now part of the family" and could use the land until it was no longer productive, at which time he would be given a new piece of land.

65. Two of the more interesting cases were related to me by Jane Guyer (personal communication, August 1988) and J.A. Omotola (personal communication, April 1988). Guyer reported a land dispute that was occurring in Otta, Ogun State. She said that a family with a large amount of land had let out some of it to a large company for farming purposes. The company registered the land. It is unclear if the company had the permission of the family to do so. In 1988 the family decided that it wanted to evict the company from the land. Of course, the company wanted to remain on the land, arguing that its position was secure because of its C of O. In 1988 lawyers were engaged by both sides, and the matter has presumably now gone to court. A similar case was related by Omotola.

66. The Lands Office issued approximately 113 Cs of O for urban residential land and 1 for rural agricultural land in Iwo LGA in the period from 1984 to 1987.

67. In some instances peasants have been successful in resisting state attempts to acquire their land, and in other cases they have successfully demanded compensation greater than that stipulated by the law.

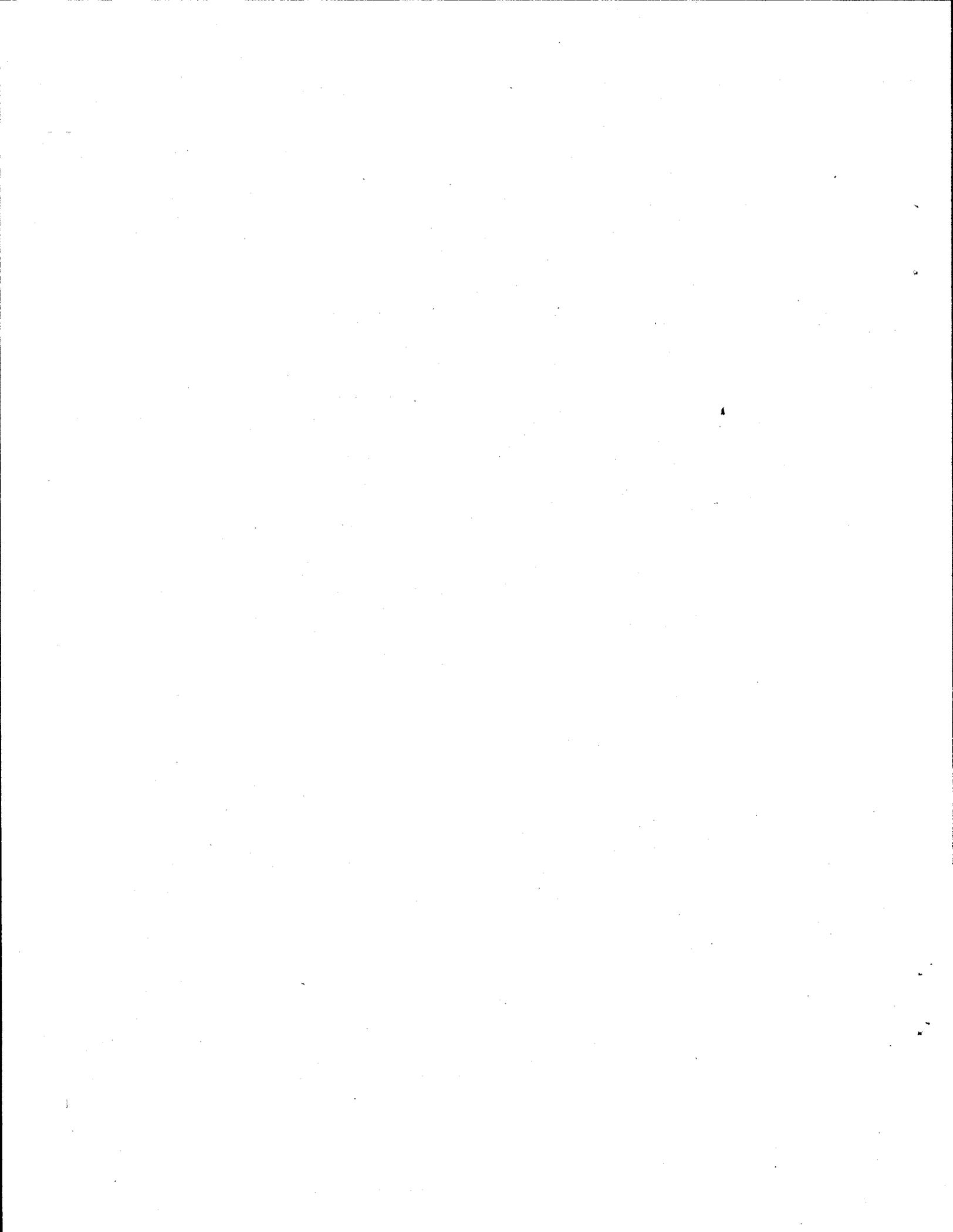
68. For example, in 1988 the agency responsible for the administration of the Act in Lagos State earned 112.8 million naira and paid out 1.1 million naira to landowners whose parcels were acquired by the government. In 1986(?) the agency allocated 193 industrial and commercial plots and 2,536 residential plots. It issued 1,024 Certificates of Occupancy and surveyed 2,500 residential, commercial, agricultural, and school parcels (see Myers 1990).

69. See also LTC (1990).

70. A process similar to this is followed in the middlebelt states and in northern Nigeria (that is, Plateau and Kano States).

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