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# LAND LAW AND DEVELOPMENT

BY M. I. JEGEDE



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## LAND LAW AND DEVELOPMENT

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### LAND LAW AND DEVELOPMENT

An Inaugural Lecture delivered at the University of Lagos  
on Thursday, 17th January, 1980

By

**M. I. JEGEDE**

**Professor of Law**

**University of Lagos**

By the time it dawned on me that I had to make a career in the academic world, I had found myself entrenched in two unrelated areas of law — Property Law and Jurisprudence. At that time I had the feeling that sooner or later I would rise to the post of a Professor, and as the University had by then established a tradition of its Professors delivering inaugural lectures, such an appointment would impose on me the obligation of delivering an inaugural lecture. In the circumstance I was confronted with a problem of choice; in other words I had the choice of either addressing Jurisprudence or Property Law. The problem could have been less compounded had the Faculty of Law remained a single unit, the original idea of its founders. In which case a Professor in the Faculty would have a free hand in the choice of his topic for an inaugural lecture.

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## LAND LAW AND DEVELOPMENT

I need to make some prefatory remarks before I go into the inaugural lecture. These remarks have some relevance on the choice of subject for this lecture.

When I joined the staff of the University in September 1964, there was no established tradition that a Professor of the University should deliver an inaugural lecture. The reason for this is obvious. Tradition develops with time and it would be unreasonable to expect an institution that was less than three years old to have evolved an established tradition. My early years in the Faculty of Law were unsettled, unsettled in the sense that I readily accepted responsibility to take charge of any subject no matter how unrelated to my interest, believing then that I would only be on the academic side of the law for a short period before I moved to the other side of the profession. In that circumstance I did not give thought to the idea of an inaugural lecture.

By the time it dawned on me that I had to make a career in the academic world, I had found myself entrenched in two unrelated areas of law — Property Law and Jurisprudence. At that time, I had the feeling that sooner or later I would rise to the post of a Professor, and as the University had by then established a tradition of its Professors delivering inaugural lectures, such an appointment would impose on me the obligation of delivering an inaugural lecture. In the circumstance I was confronted with a problem of choice; in other words I had the choice of either professing Jurisprudence or Property Law. The problem could have been less compounded had the Faculty of Law remained a single unit — the original idea of its founders, in which case a Professor in the Faculty would have a free hand in the choice of his topic for an inaugural lecture.



The Faculty had since been constituted into four departments,<sup>1</sup> a course of action I personally and strongly advocated and supported because, primarily, it makes for effective teaching and research and incidentally it equitably increases the Faculty's share of the 'national cake' in the context of the University's resources. I was appointed a Professor immediately before the splitting of the Faculty, therefore, I could rightly claim that my Professorship was, and still is, without reference to any Department and therefore gives me the right to choose the topic of my inaugural lecture regardless of the Department in which I now find myself. I thought of this valid though tenuous defence or explanation when I was called upon to deliver this inaugural lecture.

Initially, I decided on Jurisprudence — an area of law to which I am indissolubly married. Again the thought went through me that in the process of concretising the splitting of the Faculty, I had the option, like other colleagues in the Faculty, to choose any of the four Departments now constituting the Faculty, and I freely and voluntarily opted for the Department of Private and Property Law. For me, now to choose the topic of my inaugural lecture outside the department is not likely to be taken kindly by my colleagues in the department, who rightly, would like to have the honour of having the first inaugural lecture after departmentalisation of the Faculty delivered on a topic associated with the Department. And yet my interest in the sometimes arid wilderness of jurisprudence is almost pathological. This was the crux of my problem in the choice of the topic for this inaugural lecture.

In the circumstance, I considered the possible reaction of my colleagues in the Faculty, in case I decided on Jurisprudence, particularly that of my Head of the Department

1. Private and Property Law; Commercial and Industrial Law, Public Law; Jurisprudence and International Law.

who is likely to ask questions, after the lecture, as to my *locus* to remain in his Department; and it is not likely that the Head of the Department of Jurisprudence and International Law will welcome my unauthorised intrusion into his Department. This was my predicament in the choice of the topic for this lecture — a very agonising process of choice it was. Had I not considered myself competent in both areas, the problem of choice would never have arisen. In the final analysis I opted for Private and Property Law if only to retain a base in the Faculty. Therefore the topic of today's inaugural lecture is *Land law and Development*.

My concern in this lecture is to give a graphic survey of our land tenure law which, for obvious reasons can only be done in the barest minimum and to consider the extent to which it has responded to social, economic and political changes within this century.

Firstly, it must be emphasised that the land law of a community is always intrinsically interwoven with the economic and political development of the community. In other words, land law cannot be truly divorced from the community's general history and development. This is a sound and an incontrovertible fact to which our land law cannot claim exemption.

It may now appear relatively easy to attempt to identify the sources of our land law from myriads of judicial decisions and legislation. But it is generally known that judicial decisions are, in essence, declarations of existing laws and norms acceptable to the society. This is not to say that judges are not innovative or active, only that the validity of such judicial innovation depends on its sensitivity to society's competing claims, expectations and the basic values of the law. Similarly legislation is largely a response to society's values and expectations.



Generally it may be said that judicial declarations which are sometimes abstract and inconclusive and legislation which is not infrequently predicated on pardonable ignorance, are at best secondary sources of our land law. In this regard a clearer appreciation of the growth and development of our land law is to be seen in the context of our traditional social setting and its subsequent development — thus emphasising the importance of our social, economic and political history or evolution to the origin and development of our land law.

In the *Storrs Lectures* delivered at Yale University in 1921, Benjamin Cardozo, a distinguished American Judge, emphasised the importance of history or evolution in the ascertainment of various aspects of American Law. In an apparent answer to the question; to what sources of information should a judge appeal for guidance in the process of decision making? he said: "Let me speak first of those fields where there can be no progress without history. I think the law of real property supplies the readiest example. No law giver meditating a code of laws conceived the system of feudal tenures. History built up the system and the law that went with it. Never by a process of logical deduction from the idea of abstract ownership could we distinguish the incidents of an estate in fee simple from those of an estate for life, or those of an estate for years. Upon these points, 'a page of history is worth a volume of logic'. So it is wherever we turn in the forest of the law of land. Restraints upon alienation, the suspension of absolute ownership, contingent remainders, executory devices, private trust and trusts for charities, all these heads of the law are intelligible only in the light of history, and get from history the impetus which must shape their subsequent development".<sup>2</sup>

Although Judge Cardozo was concerned with Anglo-American Land Law, and there is not much juxtaposition or

2. The Nature of the Judicial Process (1921) pp. 54—55.

similarity of circumstance between Anglo-American Society and ours, his premise seems largely universal. How else, without reference to history or evolution, can one intelligibly explain the most significant aspects of our land holding systems, such as communal ownership of land and its incidental fiduciary principles, family ownership of land; the position of the head of family in the management of family property; the rights and interests of members of family in family property; the claims of Lagos Arotas and their descendants to be members of their former masters' families for the purpose of sharing rights and interests in land owned by such former masters'; the nature of customary tenancy; the relationship between the pledgor and the pledgee; and, the general problem of alienation of land under customary law.

Here it would seem appropriate to say, in the language of Justice Holmes that the life of the law is not logic but experience.<sup>3</sup> Credence is equally given to Savigny's Postulates about law, (its general shortcomings notwithstanding) that law is the reflections of peoples ways' of life and therefore can only be understood by reference to the peoples' history and evolution.<sup>4</sup> As one of his chief exponents asserted "Law grows with the growth, and strengthens with the strengths of the people, and finally dies away as the nation loses its nationality."<sup>5</sup> Though this notion of law has not and is not likely to receive universal application, the message is not in doubt. Any legal mind interested in law reform and development cannot afford to ignore the message which I consider crucial to the success of his endeavours.

3. The Common Law, p. 1, see also pp. 213 and 312.

4. Of The Vocation of Our Age for Legislation and Jurisprudence (London, Littlewood & Coy. (1831) Translation — Abraham Hayward II.

5. Ibid.



## Definition of Terms:

Before I proceed further, I consider it necessary to briefly discuss certain terms or terminologies which are crucial to the appreciation of the substance of this lecture.

### (a) What is Land?

First, the question may be asked, what is land? To many in this gathering, this question may appear irrelevant in that land cannot be any other thing but land. But to those learned in the science of law, the question raises a difficult problem. A problem that has been agitating the minds of successive generation of lawyers and yet not one of them would pretend a generally acceptable definition. The current inevitable closer links between the lawyer and the economist, particularly agricultural and land economist — has further compounded the problem as a land economist makes a distinction between Physical and Economic conceptions of land. In this context, physical conception of land denotes land in its natural state whilst economic conception of land denotes not only the physical land but also the use to which the land may be put by the application of additional economic resources such as capital, labour and management.

The legal conception of land though not free from controversy<sup>6</sup> is not, in substance, fundamentally different; it is an aggregation of both the physical and economic conceptions of land. In the broad legal sense, land includes not only the earth or soil, but also "things savouring of land such as houses, huts, farms"<sup>7</sup> and any improvement on the land. In this sense ownership of land includes ownership of improvements thereon. It is on this premise that Judge Elias rightly observed that the Roman Law doctrine *quicquid*

*plantatur solo solo cedit*, is a principle of English, as of Nigerian Property Law.<sup>8</sup> He gave a plausible explanation when he said "Like many another empirical rule of social regulation of a specific legal situation, the concept of the accession of a building or other structure to the land built upon is reasonable, convenient and universal."<sup>9</sup> Judicial opinion is in support of the principle implicit in this Roman doctrine.<sup>10</sup>

However, it would be unjust and absolutely inequitable to strictly apply this principle where the improvements on the land were made with the authority or permission of the landowner. In this regard traditional system of landholding draws a distinction between the land and the improvement made on it. Indeed the nature of group ownership under customary law is such that ownership of land is vested in the group as a unit while the individual members of the group have the right to use the land and are entitled to the fruits of their endeavours. The position is the same where land is granted to non-members of the group. These significant characteristic features of land holding systems under customary law would become clearer in my later discussion of individual rights and interests in group owned land.

The distinction referred to above does not however detracts from the legal conception of land, in that in addition to the land itself, the right to use the land and the improvements made on the land are themselves rights or interests in the land.

6. See Obi, *The Ibo Law of Property* (1963) p. 32 Lloyd, *Yoruba Land Law*, p. 13; Coker, *Family Property among the Yorubas* (1958) p. 40.

7. Asante, *Property Law and Social Goals in Ghana* (1975) p.2.

8. *Nigerian Land Law and Custom* (1951) p. 202

9. *Ibid.*

10. See *Francis v. Ibitoye* (1963) 13 N.L.R. 11; *Osho v. Olayioye* (1966) N.M.L.R. 329.



## (b) Law and Development

I will now consider very briefly, what I mean by law and development. Here again there is the problem of definition of terms; terms which are themselves capable of many meanings; consequently there is the difficulty in procuring a comprehensive definition that will satisfy the varying meanings of the terms law and development. I have, however, decided, at least for the purpose of this lecture, not to engage myself in that endless controversy characterising the definition of law — though a kind of exercise that makes the discipline of law a fascinating course of study. I would restrict myself to seeing law as an instrument of social change, a kind of institutional framework employed by man in society either to dictate and promote required change in the developmental values of the society or to respond to and control changes dictated by the political and socio-economic facts of life of the society. In this sense law is to be seen as an instrument of planned social change or as an instrument employed for crystalising and ordering of goal values in accordance with the behavioral patterns of the society. This represents, first, the creative aspect of law and second the responsive aspect reflecting and ordering accepted changes in the society. In sum, our emphasis is on the functional significance of law in a society.

The term development is perhaps more loosely used. The term is relative when we compare technological development e.g. in United States and Soviet Union. But development, for the purpose of this lecture is to be seen as goal values accepted or acceptable to the society because they are likely to improve the quality of the life of individual members of the society. For example, education is an accepted and an acceptable goal value, for it is the basis of enlightenment which in itself makes for economic progress and stability of a good and progressive government and society. So is provision of adequate medical service which is crucial to the health and wealth of a nation. Eradication of

poverty, a better distribution of income and reduction in unemployment are some of the indices economists use in measuring development. Equitable distribution of national resources such as land, has immeasurable effect on the quality of life of our citizens.

Land in Nigeria, as in most other countries is a source of wealth and wealth as already stated affects the quality of life of individual members of a society. Therefore the maximum utilization of land resources, in terms of equitable sharing, for the benefit of members of the society is clearly an accepted goal value. And, the realisation of the values involved in the idea of development is a task for a progressive legal institution. On this premise, I will now consider our law relating to land and how, at every stage of our evolution, it has responded to our stated idea of development.

### Traditional Conception of Land:

It is now a fact of history and politics that we were a subject race for almost a century and that one of the lasting consequences of that status was the imposition of a pluralistic legal system under which our ways of life are now governed by either what is now designated as the received English Law or Customary Law and Islamic Law. However, notwithstanding the statutory relegation of our Customary Law/Islamic Law by the Imperial Power, and some recent apparent ambitious legislation on the use and ownership of land, our land law is essentially Nigerian. It is very much related to the socio-economic facts of our society and can be said, with respect to the traditional setting to which it owes its origin, to be consistent with respect for morals and the fundamental policy of a society that is inherently egalitarian. This is borne out by the traditional conception of land and the incidental norms relating to ownership, management of land and the beneficial enjoyment of land resources.



Traditionally, land was conceived to be a sacred institution "an ancestral trust committed to the living for the benefit of themselves and generations yet unborn."<sup>11</sup> It was regarded as the very source of human sustenance, a kind of institution that preceeded the existence of man and society and that without it man and society would not exist. It was therefore inconceivable for any human being to claim ownership of land. The view was widely held that man was only to make use of land for the satisfaction of his needs and to preserve it for the unborn generation. It is, perhaps in this context that we can appreciate the testimony of Chief Elesi of Odogbolu before the West African Lands Commission in 1908. The Chief was reported to have stated "I conceive, that land belongs to a vast family of which many are dead, few are living and countless members are still unborn."<sup>12</sup> A similar testimony was credited to another distinguished Ghanaian traditional Chief, Nana Sir Ofori Atta I.<sup>13</sup> This traditional conception of land undoubtedly provides a rational explanation for the uniformity of land tenure in West Africa and for the loose notion of ownership as this relates to landholding system under customary law. Ownership in its strict sense connotes, inter alia, the rights to possession, use, management, income, transmissibility, outright alienation or disposition.<sup>14</sup> This notion of ownership may be relevant to individual ownership of land, it could not find favour in the analysis of land tenure law in Nigeria where the idea of ownership of land is predicated on the traditional conception of land as a God given resources for the equitable benefit of the dead, the living and the unborn generation.

11. Asante: *Fiduciary Principles in Anglo-American Law and the Customary Law of Ghana* 14 I.C.L.Q. 1144 at 1147 (1965).

12. W.A.L.C. (1908) 1048, p. 183.

13. See Ollenu – *Principles of Customary Land Law in Ghana* (1962) p.4.

14. A. M. Honore: *Ownership*; Oxford Essays in Jurisprudence Ed. By A. G. Guest (1961) 107 at 113.

In a creditable appreciation of this traditional conception of land, the Privy Council in the celebrated case of *Amodu Tijani v. Secretary, Southern Nigerian*<sup>15</sup>, made a worthwhile attempt to formulate in a reasonably precise form, the land tenure in West Africa. Viscount Haldane delivering the judgement of the Council said:

"The next fact which it is important to bear in mind in order to understand native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land but in every case the Chief or Headman of the Community, village or head of the family has charge of the land and in loose mode of speech is sometimes called the 'owner'. He is to some extent in the position of a trustee and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build upon goes to him for it. But the land so given still remains the property of the community or family. He cannot make any important disposition of the land without consulting with either the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast, and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas. But the native idea still has a firm hold on the people, and in most cases, even in Lagos, land is held by the family. This is so even in cases of land purporting to be held under Crown Grants and English conveyances. The original grantee may have held as an individual owner but on his death all his family claim an interest,

15. (1921) A. C. 339.



which is always recognised, and thus the land becomes again family land."<sup>16</sup>

I need not apologise for quoting this lengthy passage, in view of its clarity on the apparently complex systems of customary land tenure. It is admitted that some of the principles advanced in the judgement may not be free from controversy particularly the assertion that the notion of individual ownership is alien to customary land tenure, nonetheless, the pronouncement represents the landmark in the exposition of our indigenous land tenure law. Critics may be uncomfortable as regards the claim to the validity of the principles throughout the length and breadth of the country, but the fact remains that group ownership of land, in whatever form, be it family, community or village in contradistinction to individual ownership, is a significant characteristic feature of our customary land tenure.

What is implicit in this statement of principles of our customary land tenure is the value which our society attaches to land. Much as our customary land tenure resents the idea of absolute ownership, it makes provision for every willing member of the group owning unit to share in the resources of land. As I have earlier on stated, customary land tenure is inherently egalitarian in that it provides for equitable sharing of land and its resources.

Surely, there is much to be said in favour of customary land tenure. A kind of land tenure which provides for equitable distribution of land where an individual member of the group owning unit is limited to the use of land which he can, depending on his ability, conveniently cultivate or develop, and which goes further to preserve the land not only for the living but also for the generation yet unborn. Such a system of landholding cannot but be a good and veritable

16. Ibid. at 403.

advertisement of our traditional sense of togetherness and social value. However, the tenacity of such a system of group holding of land depends on the continuous existence of communities whose members are bound together by ancestral cleavage of kinship and whose values are commonly shared. It need hardly be emphasised that members of the traditional communities were closely knit, each member was his brother's keeper; and as long as this sense of togetherness persists, communal and family land tenure which provide social solidarity and social insurance against destitution would continue to attract members of the group owning unit.

However, it is here pertinent to remark that communal ownership of land under customary law has nothing to do with feudal tenure; it does not mean or imply communal use of land, in other words communal ownership of land is in no way synonymous with communal use of land. What is incontrovertible under customary land tenure is that a man is absolutely entitled to the crops on his farmland, notwithstanding the fact that the farmland is part of communal land. The position is best described in the following statement, "when a person puts his individual effort into a piece of land he creates something of a personal identity of self and soil. To the degree that he intensifies this it becomes a legal relation, and the powers of the collective community with respect to that particular field, fish pool, garden or house-compound are reduced. If he neglects his holding or permits its usufruct to lapse through inactivity, then the powers of the community are re-established and the community's right of disposal is once more freely asserted".<sup>17</sup> I cannot find a better way of describing the nature of the rights of individual member's right in community land allotted to him.

That he enjoys exclusive rights in his allotted portion of communal land is never in doubt. He is entitled to cultivate

17. Meek; Land Tenure and Land Administration in Nigeria (1957) p. 124.



or build up the portion allotted to him. It is a *sine quam non* that an individual who exerts considerable labour in the cultivation and the development of his allotted portion, is absolutely entitled to his correspondingly rich harvest. This appears to be the general principle of customary land tenure in all the communities where communal land is still in existence.

Furthermore, it is significant to note that the reciprocal and obligatory personal services which characterised the English feudal tenure law have no counterpart in our communal system of landholding which as we have seen gives a clear recognition to the rights and interests of the individual members of the landholding group — be it a village, a clan or a family.

What is certain is that our society has not been static, it has responded and will continue to respond to societal's values dictated by social, political and economic changes. In this regard, group ownership of land is rapidly yielding to either individual or family ownership. Politically, imposition of British rule compelled interaction with English juristic ideas with their emphasis on individual ownership of land; socially the traditional society is becoming more individualistic in terms of values sought and expectations; economically, new forms of wealth and commerce demand, to a large extent, individual ownership of land.

Consequently, it is not infrequently that one comes across strong views denouncing group ownership of land as being retrogressive and therefore ought not to have a place in the modern Nigerian Societies. The correctness or otherwise of these views will be later examined.

## Changes Affecting Traditional Conception of Land

For the moment I would like to deal with the inroad made by individualisation of land into our communal and family tenure law. It is a fact of history that Pre-British Nigerian Communities were small, homogeneous and closely knit; social and economic interaction with outsiders was almost unknown to members of the traditional community. Community values and expectations were equally shared. As should be expected, customary law including customary land tenure law were geared towards the objective of ensuring equitable distribution of land and its resources. The system which depended on the existence of a strong community with all its values equitably shared could not and did not withstand the introduction of foreign values and ideas. Thus, the advent of the British brought about the gradual disintegration or dissolution of traditional communities. New forms of wealth and commerce created conflict of interests which cannot be resolved within the framework of customary law whose rules are not designed to reconcile the type of conflicts which characterize the evolving modern individualistic society. In the opinion of Judge Elias. "There is rapidly increasing minority of the intelligentsia or elite who are no longer part of the old tribal tradition and on the other hand the vast majority still under the majestic tribal sway: in between these two extremes are the urban and industrial groups with a foot in each camp."<sup>18</sup> The effect of this social change on the traditional conception of land and customary land tenure is not in doubt. Many Nigerians are no longer interested in communal or group ownership of land on the ground that such ownership could not satisfy their individual economic interest.

The acquisitive nature of the newly arrived Nigerian elite is such that they would not hesitate to support any

18. "Government and Politics in Africa (1961) pp. 136-137.



move towards individualisation of land. The situation has been very much encouraged by notorious maladministration of group-owned land by chiefs, community elders and heads of families, who under customary law are ordained to manage such lands for the benefit of members of the communities or families. Whereas in the past, the fidelity of the Chief to members of his community was absolute, so was that of the head of the family. It was inconceivable that a Chief or family head would have any personal interest that would conflict with his duties to members of his community. Correspondingly, it was unthinkable that a member of the community would bring an action against the chief or head of his family. It was in that atmosphere that customary land tenure was able to satisfy the commonly shared values of the members of the community.

Today, the position has, regrettably, undergone a frightening change. Traditional community is breaking down as a result of the pressures and temptations of new wealth and new values; traditional self-discipline which has been the bedrock of harmonious and honest relations among members of various communities is being thrown over board. As a member of modern society, a chief now has many personal interests which conflict with his duties to members of his community. Chiefs, Community elders and heads of families are now more concerned with the advancement of their self-interests than with the honest and faithful discharge of their duties to members of the community. Evidence abound that they appropriate income from group-owned land for their own benefit contrary to the customary law principle that they should hold such income in trust for the benefit of members of their communities.<sup>19</sup>

For example in the old Western Region the then Regional Government was compelled to institute a number of

19. See Obi — The Ibo Law of Property (1963) pp. 45–46.

commission of enquiries into the administration of group-owned land.<sup>20</sup> The reports, which I believe are resting peacefully in the Archives, confirmed the greed and unprecedented racketeering in the administration of group-owned land. Indeed it was in this context that Lloyd, in his *Yoruba land law*, observed: "In several towns of the Region (Western Region) political unrest has, in recent years, arisen when the people have accused their Oba (Chief) of misusing his powers of allotting vacant land and in particular of converting the income so received to his own personal use (e.g. building private houses) instead of using it for the benefit of his town. It seems to be doubtful whether any action, in customary law, could be taken against the Oba."<sup>21</sup>

The Government demonstrated its concern by enacting the Communal Land Rights (Vesting in Trustees) Law 1958 — subsequently amended in 1959 and in 1967. No doubt the Law was intended to control the powers of chiefs over community land and to ensure that income from community land is disbursed in such a way as would benefit the entire community. Laudable as the objective of the law is, political crisis in the Region immediately following the enactment of the law did not permit its application to most parts of the Region. The succeeding military government's attempt to revive its application and enforcement did not, for various reasons, meet with much success and thus ended the first legislative attempt to control maladministration of communal land.

Perhaps it is pertinent here to note that the judiciary was not unaware of the need to harmonize principles of customary land tenure law so as to reflect the changing values of the society without antagonising the basic tenet of

20. See Warner, Report on an Inquiry into the Activities of Akure Communal Land Trustees (1964) p. 29 (unpublished).

21. Lloyd, *Yoruba Land Law* pp. 360–361.



customary land tenure. Here the very instructive judgement of the late Chief Justice Somolu in *Ajiboye Akande v. Bamgboye Akanbi*,<sup>22</sup> becomes relevant. The plaintiffs were members of a property owning family at Ibadan while the defendant was the head of the family. The plaintiffs brought the action for an account of all proceeds of sale and compensation for the acquisition of family property. The defendant contended that as Head of the family, an action for an account — being an equitable remedy peculiar to the received English law, was not under customary law maintainable against the head of the family. In other words that the head of the family under customary law is not liable to account to members of the family in respect of his management of family property. The Chief Justice was aware of the strict rule of customary law that the head of the family was not liable to account to junior members of the family, but his progressive mind made it clear to him that survival of customary law depends on the ability of decision-makers to see law in the context of a changing society. Thus, after reviewing the relevant authorities — the learned judge held that it has become an acceptable part of the duties of heads of families to account. Giving reasons for what appears to be a radical departure from customary law principle, he said: "Times have changed considerably and the simple life of the people has become rather complex. Men and Women have learnt to build up for themselves some sort of financial empires, big or small, and it will be rather lamentable to allow heads of families to fend for themselves at the expense of their members. I hold as a matter of law today that it is far better to impose restrictions on the heads of families by making them liable to account, even strict account than to lay them open to temptation by unnecessary laxity in the running of family affairs which inevitably follows non-liability in that respect. To hold otherwise will be outrageous to our present sense of justice and will open the flood-gate

22. The Nigerian Bar Journal Vol. VIII (1966) p. 86.

of fraud, prodigality, in-difference or negligence in all its forms and cause untold hardships on several families, especially the young members."<sup>23</sup>

Few would disagree with this judicial opinion which I consider progressive and responsive to the changing characteristics of our customary land tenure and their governing principles. It is indeed, a worthwhile judicial effort to ensure that group-owned lands are managed in such a way as to serve the best interest of members of the group-owning unit — thus revitalising the idea of ancestral trust to which our customary land tenure owes its origin and subsequent development. This kind of judicial opinion is only relevant where cases of maladministration of group-owned land come before the court for adjudication. But it is well known that, for a number of reasons, only few cases of such maladministration ever come before the courts.

#### The Need For a New Land Policy

Looking at our customary land tenure in the context of modern society (its inherently egalitarian character notwithstanding;) it is now incontrovertible that the pressures of the new social and economic forces have not only influenced but also require fundamental changes in the system of land-holding in the country. No doubt the process is going to be slow but the consequences would be the jettisoning of the doctrinal forms of traditional holding to be replaced by a modified system which the reality of modern social and economic conditions demand.

Before the Land Use Decree, the most agonising aspects of our land tenure law particularly in the Southern States are inflexible rules of alienation, uncertainty and insecurity of title. These characteristics more than any other are always used by advocates of individualisation of land in support of

23. Ibid, at 91



their contention. In the *Third of the Series of The Hamlyn Lectures*, entitled *The Rational Strength of English Law*, Professor Lawson said: "If land is to be a fully marketable commodity, the ownership should be unlimited and undivided, so as to enable a single person or closely associated group of persons to give the full ownership, the land itself, to a purchaser with the least amount of trouble to both parties".<sup>24</sup>

This very important characteristic of a progressive land tenure law has been lacking in our land tenure law. Apart from titles derived from State lands, lands subject to statutory rights of occupancy under the repealed Land Tenure Law of the Northern States, and a few other titled lands in few urban areas scattered all over the country, the problem of alienation and insecurity of title to land has been the greatest set back to the development of our land tenure law.

The problem is traceable to the traditional conception of land and the land tenure law derived therefrom. It is well known that traditional land tenure law frowned against alienation of land. As Judge Elias once observed, "There is perhaps no other principle more fundamental to the indigenous land tenure system than the theory of inalienability of land".<sup>25</sup> Earlier on, in *Lewis v. Bankole*<sup>26</sup>, Chief Justice Osborne had observed that "The idea of alienation of land was undoubtedly foreign to native ideas in the olden days".<sup>27</sup> There is nothing particularly staggering in this proposition for the simple reason that in the olden days land was readily available for each member of the owning group either to cultivate or build upon and there was no

24. P. 93.

25. Elias — *Nigerian Land Law and Custom*, p. 18.

26. (1908) 1 N.L.R. 81.

27. *Ibid.* at 104.

demand for land by any stranger or foreigners for purposes of trade and commerce. In that circumstance there was no need for any customary rule regarding alienation of land. However, with the passing of time, political and economic changes have brought about social interactions with other peoples, the effects of which require free and flexible alienation of land. The indigenous land tenure law had since responded to this development, land has long become alienable<sup>28</sup> — but the rules relating to alienation and conferment of valid title on purchasers are, to say the least, cumbersome and erratic being incapable of precise definition. This is inherent in the nature of indigenous land-holding system in which ownership is vested in a large number of people and such ownership can only be validly transferred by the head of the group (who may be difficult to identify) with the consent of an unspecified number of elders or principal members of the group.

If I may restate the customary law principle relating to disposition of family land — it is that family land can only be validly alienated by the head of the family with the consent of the principal members of the family. It is an inflexible rule of customary law; therefore, any purported alienation of family land to the contrary is invalid. This apparently simple principle is easier stated than applied. The inherent difficulty in the principle becomes clearer when it is realised that 50 or more persons may constitute a family owning unit. It is the task of a prospective purchaser of family land, first to identify who is the head of the family, second to identify the principal members of the family — and this is not an easy task in the absence of any authentic document setting out their names, and finally to ensure that the head of the family with whom he is dealing has not only consulted with the members but also obtained their consent. Surely it would not be an exaggeration to say that the task involved is beyond the capability of the most prudent pros-

28. *Oshodi v. Balogun* (1936) 4 W.A.C.A. 1 at p.2



pective purchaser of family land. The consequence of non-compliance with the customary rule is illustrated in a number of judicial decisions.

In *Belo Adedubu v. Makanjuola*,<sup>29</sup> the head of the family had alienated family land without consulting members of the family. In the Court of trial, it was argued and accepted that the head of a family had the power under customary law, by virtue of his position, to dispose of family land without consulting with and against the wishes of members of the family. The trial judge was of the opinion that, were it not so, there would be very little, if any, security of tenure, for, however careful a prospective purchaser of land might be to ensure that all is in order before completing his transaction, he could never be certain that, after considerable expenditure on the land, some members or members of the family might not succeed in obtaining a rescission of the contract on the grounds that they had not been consulted. The trial judge has my sympathy. His policy consideration, undoubtedly, goes into the root of the problem affecting alienation of group-owned land under customary tenure. But his proposition is clearly against the known rule of customary law relating to disposition of family land. It is therefore not surprising that his policy-oriented decision was reversed on appeal. In the language of Kingdom C. J. "The learned Judge was at some pains to point out that it was in the interest of strangers trying to acquire family land that the consent of the family should not be required to alienation of family land. That may be so but such considerations of policy are matters for the legislature and not for the courts. The native law and custom throughout West Africa in regard to the alienation of family land quite naturally has as its basis the interest of the family and not the interest of strangers who may wish to acquire family land".<sup>30</sup>

29. (1944) 10 W.A.C.A. 33.

30. Ibid. at pp. 35-36.

The defect inherent in the rule, amongst others, is that it provides avenue for unscrupulous families to sell the same piece of land at different times to different persons, and none of the purchasers obtaining a valid title. It was Verity Ag. P. who stated in one of the many cases involving the Oloto family that "It passes my comprehension how in these days, when such disputes have come before this court over and over again, any person will purchase land from this family without the most careful investigation, for more often than not they purchase a law suit, and very often that is all they get".<sup>31</sup> Disputes of this nature abound in our law courts, they are sapping the time and strength of our courts, and it is doubtful if the end is in sight in spite of the Land Use Decree.

The unwholesome consequences of the problem of alienation on our economic advancement were very much appreciated by the Committee on the Registration of Title to Land in the old Western Nigeria. The Committee noted, among others, the following inadequacies: That "A man who wishes to purchase or lease land cannot find out who are the right people to convey it to him; many men buy their land twice from rival claimants or from two sections of a family. Having acquired the land a man is reluctant to develop it, being unsure of his rights to it. When he does take the plunge and builds an imposing house or plants permanent crops he finds that his lack of a secure title prevents him from readily selling the property or from mortgaging it to raise credit for further expansion of his business. Well known is the unscrupulous debtor who has cited his house as security for a loan and who immediately defaults claiming, successfully, that the building is on family land and cannot therefore be attached for his debts".<sup>32</sup>

31. *Ogunbambi v. Abowab* (1951) 13 W.A.C.A. 222 at 223.

32. Sessional paper No. 2 of 1961 paragraph 2.



Such a system of landholding that is so much characterised with uncertainty as to security of title and which imposes so much restraint on disposition of land constitutes an unpleasant obstacle to the country's path of economic progress. For, it is undeniably clear that one of the setbacks of an average Nigerian businessman is his inability to raise credit — to such a businessman, group owned-land does not provide an answer to his problem — any property that lacks the character of a realisable asset is, to say the least, worthless to an enterprising businessman in search of credit or capital.

At this juncture, I would like to refer to the Registered Land Act of 1965. The Act was passed by the then Federal Legislature with a view to bringing some measure of sanity to the ascertainment of title to land in the then Federal Territory of Lagos. It was intended to free family land from the tight control of customary law by providing for flexible alienation of such land and at the same time protecting interests of family members. Generally alienation of family land under the Act is very much similar to disposition of trust land under the English property legislation of 1925.

It is well known that the Act was never brought into operation for various reasons, such as imprecise delimitation of boundaries, lack of adequate technical staff and prohibitive costs of administration. It can however, be regarded as a pointer to what should be done with respect to reform of our land tenure law.

#### **Land Use Decree:**

The Land Use Decree, which was promulgated early in 1978 is perhaps the most revolutionary legislation of our time as far as land tenure law in the Southern States is concerned. However, the Decree is not entirely new to the

country as most of its provisions are substantial-re-enactments of the Land Tenure Law applicable to the Northern States.

The Land Tenure Law of the Northern States owes its origin to a number of factors which make for fundamental distinction between the apparent peaceful operation of the law in the North and the present suspicion surrounding its introduction by the Land Use Decree into the Southern States.

The traditional system of tenure in the North was first disturbed after the jihad, whereby the conqueror claimed overlordship of the land and introduced a kind of feudal tenure. It required British occupation to free landholding in the North from its feudal character.

The British Colonial Government was very much interested in trade and commerce, it generally maintained a policy of non-intervention in the customary land tenure as long as the continuing existence of such tenure did not constitute any obstacle to planned exploitation of the country. It, however, regarded itself as successor to the conquered rulers of the North, and in the same manner, claimed overlordship of all lands in the territory. This policy which was more of control was necessary for the promotion of commerce and essentially to protect native land from reckless alienation. Thus the seed of the present Land Use Decree was inadvertently sown. What followed were series of legislation, starting from The Public Lands Proclamation of 1902, The Land and Native Rights Proclamation 1910, which was repealed and modified by the Land and Native Rights Ordinance of 1916. This legislation remained the operative land tenure law in the North until 1962 when it was repealed and substantially re-enacted as the Land Tenure Law 1962. The common trend in all these legislation is that ownership of all lands in the North was vested in the Government in trust for the



people. The effect is that no individual, family or community, is capable of having absolute ownership in land, unlike the situation in the Southern States before the present Land Use Decree. What an individual or group could own in the North was a right of occupancy which could be either customary or statutory and could be revoked at any time for good cause by the Government subject to payment of compensation only for the improvement on the land but never for the land which is owned by the Government.

By the Land Use Decree, there is now a uniform land policy all over the Federation along the stated principles of the Land Tenure Law of 1962. In the circumstance, the fact that the Land Use Decree vested the ownership of all land in the Government does not represent any fundamental change to the citizens in the North who have been used to that system for about a century. It is therefore not surprising that the near traumatic effect and the mis-givings which the promulgation of the Decree had on the people in the South were non-existent in the North. It must, however, be remarked, that substantial land-holdings in the North are subject to customary rights of occupancy which permit the greatest number of the people to enjoy their land in accordance with the customary law. Most probably they are not aware of the absolute power of the Government to compulsorily acquire undeveloped land without payment of compensation whatsoever. And as long as they enjoy the use of the land in the same way as their forefathers, Land Use Decree, to them, could not be a living law as was the repealed Land Tenure Law.

The Land Use Decree vests all land comprised in the territory of each state in the Federation in the Governor of that state. Such land is to be held in trust and administered by the Governor for the use and common benefit of all Nigerians. The simple effect of this provision is that the

absolute ownership of all land within a state vests exclusively in the Governor, a kind of nationalisation whereby both the radical and the proprietary title are vested in the Governor.

The interest which a person can obtain in land is a right of occupancy — a right to the use and occupation of land. The Decree creates two types of rights of occupancy: a statutory right of occupancy, which a Governor is empowered to grant — mostly in urban areas and a customary right of occupancy which is to be granted by a Local Government in respect of land within its area of jurisdiction mostly in the rural areas except where such right is granted by the Governor. The marked difference between the two types of rights is that in the case of statutory right of occupancy, it can only be granted by the Governor, and the content of the right is very much similar to the existing right of tenants of state land, such as Ikoyi, Victoria Island and some other state lands scattered all over the Federation. On the other hand, customary right of occupancy is largely to be granted by Local Government and it means the right of a person or community lawfully using or occupying land in accordance with customary law. In other words, the quantum of the right save the question of alienation is equivalent to the existing right under customary tenure.

The true nature of the right of occupancy under the Decree is difficult to define with precision. It is certainly not a lease — it lacks the characteristics of a lease and it would appear to be superior to a lease being capable of perpetual enjoyment. I would agree with the view that the right of occupancy is a hybrid form of right — being greater and superior to a mere personal right but certainly less than a proprietary right. The right is similar to that existing under the Tangayika Land Ordinance as interpreted by the Privy



Council in *Premchand Nathu & Co. Ltd., v. Land Officer*.<sup>33</sup> In that case, the nature of the right of occupancy under the Tangayika Land Ordinance which is similar to the right of occupancy under the Land Use Decree, came for consideration. In the opinion of the Privy Council "The intention of the Land Ordinance was to establish an entirely new interest in land, similar to leases in some respect but different in others .... the Act was intended to be a complete code regulating the respective rights of the Crown and the occupier".<sup>34</sup>

The Decree goes further to make elaborate provision for the implementation and administration of the policy implicit in the Decree. Among others, it provides for the quantum of undeveloped land a person may hold in urban area and all land held in excess of this quantum is forfeited to the Government. This provision is only applicable to the land held immediately before the coming into effect of the Decree. It should, however, be noted that this restriction is only transitional, applicable only to undeveloped land acquired in Urban Areas before the Decree. There is nothing in the Decree which restricts the extent of land which a person can in future acquire in urban or non-urban areas provided consent of the Governor or Local Government Authority is obtained.

#### Transfer of Rights of Occupancy

Of particular interest is the provision relating to transfer of rights of occupancy. As I have stated earlier, the most intractable problems affecting land tenure system in the Southern States have been inflexible rules of alienation and uncertainty of title. It is well known that neither the Land Registration Act 1924 nor Registration of Titles Act 1935

33. (1963) A.C. 177

34. Ibid at 190.

which is operative within a limited area of Lagos, has been able to rectify the situation. In fact, they were not so designed. Based on many assumptions and variables, which cannot be conveniently discussed in this lecture, it would appear that the Land Use Decree may go a long way to providing an answer. There is not much difficulty with respect to transfer of statutory right of occupancy — the transferee will have to rely on the certificate of occupancy and, provided the required consent is obtained and the certificate of occupancy had earlier been obtained in accordance with the provisions of the Decree, the right so obtained from the transferee is unchallengable. The position could not be different from the transfer of a tenant's right in State land.

However, the position may not be as straight forward with respect to customary right of occupancy. The Decree makes clear that rights of occupancy can be enjoyed in accordance with customary law contrary to some erroneous assertions in some quarters that the Decree abolished customary system of land holding, it does no such thing. I would have been surprised if a system that is so rooted in the social organisation of many Nigerian communities can be so abolished by a stroke of a military Decree. It is my considered view that rules of customary law will continue to apply whether statutory or customary right of occupancy is held by a community or family. Thus a disposition of a family right of occupancy must be by the head of the family with the usual consent of the principal members of the family, and with the consent of the military Governor or the Local Government as the case may be. This, of course, does not apply to customary allocation made by the head of the family to members of the family. If it is intended to apply to allocation it would certainly remain as one of the unenforceable provisions in the Decree, quietly taking its place among the non-living laws on our statute books.



What is more important is the requirement in respect of the disposition of customary right of occupancy. The Decree provides that whenever a statutory right of occupancy is granted, the Governor is obliged to issue a certificate of occupancy to the grantee in evidence of the grant. But the position is different in the case of customary right of occupancy in that such certificates will only be issued if and when the occupier applies for it. What then will be the evidence of his grant to a prospective transferee of the right, if such a certificate is not applied for? Furthermore, transfer of customary right of occupancy is made more complex by the requirement of double consent, that is, the consent of the Governor or that of the Local Government and in addition the consent of the family obtained in accordance with customary law. Thus a disposition of family right of occupancy that is not in accordance with customary law, will not be validated by consent of the Governor or that of the Local Authority. In the circumstance transfer of family right of occupancy may still be characterised by inflexible rule of alienation and insecurity of title inherent in customary land tenure. This will be unfortunate and will be contrary to one of the fundamental objectives of the Decree which is to foster the path of our economic development by a re-arrangement of our retrogressive landholding system in such a way that rights and interests in land can become easily realisable assets.

#### General Evaluation of the Decree

By and large the Decree contains many more controversial issues of substance and procedure which would surface themselves in the process of implementation. For one thing, it would not be easy to deprive a person of his property without payment of compensation particularly at this stage of our development, and in the absence of any philosophy or nationally acceptable ideology as to ownership of property. The military administration that promulgated the Decree did

not pretend to have been guided by any known philosophy, neither were they ideologically committed. On top of it, their declarations sometimes conflict with their deeds, hence the widespread suspicions and misgivings surrounding the apparent genuine intention that motivated the Decree even though some of the provisions of the Decree appear to be an exercise in ignorance.

Be that as it may, anyone conversant with the workings of our land tenure law before the Decree would agree that there was need for reform. The pre-Decree land tenure has been a cog in the wheel of rapid economic progress. This is very noticeable in urban and industrial sectors. The situation is not much better in the rural agricultural areas where the idea of overlord collecting tributes from his customary tenants predominates. Though in many of those areas people still conceive of land in the same way as their forefathers, as long as land is still plentiful there has not been much conflict of interest and they do not seem to feel the effect of uncertainty inherent in ownership and transfer of land as a realisable asset. However, in some states, scarcity of land has led to uneconomic fragmentation of available land, consequently people who would have otherwise settled in rural areas are making their way to the already congested and highly unsanitary urban areas to add to the problem of congestion, unemployment, armed-robbery and the like.

Furthermore, it is well known that our system of land tenure does not provide adequate incentive to the individual to put effort or money in land and this militates against land conservation and improvement. Insecurity of title which is a bane of the system, does not encourage introduction of permanent cash crops and better farming methods. It is equally true that such insecurity makes it impossible for farmers to raise loans on the security of their land for pur-



poses designed to increase its productivity.<sup>35</sup> In addition as I have stated earlier "as scarcity enhances the value of land and an exchange economy begins to develop",<sup>36</sup> the head of the family or the chief who are the traditional authorities charge with land allocation, are encouraged to manipulate the system for their own personal benefits.

Indeed, Professor Arthur Lewis, in the *Theory of Economic Growth*, indirectly pointed out the present inadequacies of our land tenure. He said "The extended family system has tremendous advantages in societies living at a subsistence level, but it seems not to be appropriate to societies where economic growth is occurring. In such societies it is almost certainly a drag on effort. For growth depends on initiative, and initiative is likely to be stifled if the individual who makes the effort is required to share the rewards with many others whose claims he does not recognise".<sup>37</sup>

There are, of course, voices of dissent. For example Professor Oluwasanmi believed that the assumed superiority of individual right in land over communal ownership has not been conclusively proved in terms of economic and social advantages; few would disagree with his observation that communal tenure enjoys certain inherent social advantages that are absent from the individual forms of tenure.<sup>38</sup> This may be true, but it is equally true, that the prosperity of Western Countries largely depend on the recognition of the inviolate right of the individual in pursuance of his eco-

35. Report of a conference on African Land Tenure in East and Central Africa — a special supplement to the Journal of African Administration — October, 1956.

36. Ibid.

37. *Theory of Economic Growth*, p. 114.

38. Land Tenure and Agricultural Improvement in Tropical Africa (1957) 39 Journal of Farm Economics 731 at 734.

omic desires. Not to admit that individualism contributed in large measure to the social and economic progress of Western Countries would be doing injustice to European economic history. However the consequences of individualism in Western Countries have been, among others, concentration of wealth and political power in a few hands. Inequality of wealth distribution, which has become a significant feature of the Western Industrial Societies, struck the conscience of the jurists in the late 19th century; while they recognised the right to private property, they advocated that such right is only sacrosanct if it is used for the welfare of the community. The idea of respect for private property simply because of its assumed direct connection with the individual's labour and incentive has been de-emphasised as ownership of private property cannot, in many cases, be justified on the theory of incentive or personal endeavours. In fact there are cases in which ownership of private property has been used as instruments of oppression, barefaced exploitation of the toiling masses and unpardonable wastage. Hence we have the argument which seems to be pervading that while private ownership should be recognised its ultimate control should be vested in the state who is the best decider of what is in the best interest of the community as against private right. This, of course, is on the assumption that those who are charged with the running of the state affairs are themselves democratically elected and are liable to be removed from office through constitutional and democratic processes.

The Land Use Decree, if it is to succeed, must be seen and influenced in its administration and implementation, in the context of society's values which place some premium on individual rights without being antagonistic to the traditional system of collectivism. What a member of our society demands is a sense of fulfilment which in itself presupposes some degree of individualism with respect to control of property. This is not to say that loyalty to the group is completely eroded, but that the loyalty is now to be seen



not in terms of group ownership of property but in terms of what an individual can contribute from his own individual efforts to the solidarity of the group. In other words, because of social and economic changes, the degree of individual commitment to the development of his individually controlled property is much higher than that of group owned and controlled property.

The Land Use Decree is a kind of nationalisation of land. A community's relationship with land creates a number of property rights which are sometimes complex and unintelligible and may not be responsive to society's planned development. In that circumstance it is not unusual for policy makers to be tempted to believe that land nationalisation would provide the necessary recipe for the inadequacies of their land tenure law. They conceive of land as an ordinary piece of property which once acquired can be manipulated to achieve their stated objectives. They do not seem to appreciate the complexity of the inter-connecting rights in land. Land nationalisation does no more than a re-arrangement of property rights, it does not destroy property rights in land. Again based on a number of assumptions such a re-arrangement may or may not achieve the planned development.<sup>39</sup>

The problem is more acute in our society which is geared towards extreme and unrestrictable capitalism — a complete antithesis of land nationalisation. Unless adequate care is taken in the administration and implementation of the Land Use Decree, it may result in the widening of the existing gap between the poor and the rich.

Our past experience with respect to the distribution by Government functionaries of State lands is far from being encouraging. The result has been to make property acquired

39. See D.R. Denman, *Land Use and The Constitution of Property* (1969) p. 17.

and developed with public funds available at less than its market value, to persons who are either closely connected with the top government functionaries or to many others who invariably have more wealth than most. Even in the Northern States where the Land Tenure Law and its predecessors have been in operation for about a century, there is the far cry against rich and influential members of the society using their position to seize the land of the less privileged members of the society. I sincerely hope that the Land Use Decree will ensure that this does not repeat itself.

As Professor Woodman once observed: "The amount of wealth a person holds presumably affects the quality of his life, and the quality of every person's life is frequently regarded as valuable. To the extent that this view is widespread, those who discuss possible systems of land law will wish to know the relationship between that and the distribution of wealth."<sup>40</sup> If the Land Use Decree is implemented in such a way as to serve the interest of the privileged, then our society must be prepared, in no distant future, for increased cases of armed robbery and the possible introduction of a Western type of kidnapping and demand for huge ransom.

The rearrangement of property rights promised in the Land Use Decree must be essentially egalitarian. We have, on several occasions, declared our intention to evolve an egalitarian society. Egalitarianism presupposes the achievement of certain economic goals which cannot be divorced from equitable sharing of land resources. Thus, a society that fails to provide effective institutional framework for distribution of wealth resources cannot lay any claim to egalitarianism. Inequality in terms of power and wealth sharing is the characteristic of such a society. It needs no emphasis that the system of landholding in a society goes a long way

40. *Land Law and the Distribution of wealth in Essays in Ghanaian Law* (1976) p. 159.



to determine whether or not such a society has accepted the philosophy and practice of an egalitarian society.

It is no longer open to debate that land is the essence of wealth and power — the most valuable resource and the foundation of human existence and civilization. Landholding system, therefore, affects not only social and economic development of a society but also its political stability. Thus our landholding system must be such as to provide sufficient incentive and access to individuals or groups for the maximum utilization of our land resources and at the same time guard against concentration of land resources in a few hands. To do otherwise will, on the one hand, retard our economic development and on the other, provide a fertile ground for legitimate revolution with its consequent economic stagnation and political instability.

I would like to end this lecture by referring to Lord Denning's opinion on concept of justice. In his lectures, *The Road to Justice*, he said: "When you set out on this road you must remember that there are two great objects to be achieved: one is to see that the laws are just: the other that they are justly administered. Both are important, but of the two, the more important is that the law should be justly administered. It is no use having just laws if they are administered unfairly by bad judges, corrupt lawyers"<sup>41</sup> and if I may add unscrupulous government functionaries.

The Land Use Decree must be seen and implemented in this context. Incidentally, the Government has announced its intention to re-examine the Decree with a view to amending it if found necessary; this is all well and good: but I would like to remind them of the task ahead. The Military Government were so convinced of the goodness of the Decree that they used their dictatorial power to entrench it

41. *The Road to Justice* (London) 1955 pp. 6-7.

in the Constitution, to the extent that the Decree cannot now be altered or repealed except in accordance with the provision of section 9(2) of the Constitution. This section requires that any proposal to amend or repeal the Decree must be supported by two-third majority of all the members of the National Assembly and approved by resolution of the House of Assembly of not less than two-thirds of all the States in the Federation. And so, the end of the controversy as to what is 2/3 (two-thirds) of 19 may not be after all in sight. My sympathy goes to the Supreme Court while we continue with our research into our land law and development.