Land Administration Systems and their Legal Frameworks Reform for Nigeria

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SUMMARY

Nigeria is one of the sixteen countries in the West African region requiring land tenure reform. Nigeria's Constitution failed to recognise customary tenure, law, and administration as inherent forms of the institutional and legal framework for land administration. The coexistence of *inherent* and *inherited* forms of land administration institutions causes tenure insecurity, social exclusion, and local economic underdevelopment for the peri-urban dwellers. Land tenure insecurity-related problems have increased in recent times. Using a human rights-based, rule of law, and legal pluralism (HRLP) conceptual framework to assess the land administration systems and their legal frameworks, the LASs and their associated legal frameworks are analysed for their *success*, *sustainability*, and *significance*. Land administration systems (LASs) and their associated legal frameworks are studied in three post-colonial countries – Nigeria, Kenya, and South Africa – to analyse the implementation of the Constitution and land policy as it relates to LASs. The research design is a multiple case study used to identify successes and challenges. Highlighting successes and challenges provides an understanding of LASs and their legal frameworks within a hybrid legal system (customary and statutory). This desktop study relies on secondary data (land laws, land policy, legislation, and published journal articles). Drawing from the experiences in Kenya and South Africa, recommendations are made for improving the Nigerian LAS and its legal framework and general LAS reform. The study is significant for policymakers, professionals, and academics engaging in reforming the LASs and their legal frameworks in Nigeria. It has relevance in the current Nigerian context.

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1 Introduction

Despite the lack of official recognition for customary land administration in Nigeria's Land Use Act of 1978 (LUA) and the Constitution of the Federal Republic of Nigeria, 1999 (hereafter called the Nigerian Constitution), customary land administration systems (LAS) is resilient in Nigeria. In urban areas, the LUA provides an adequate basis for land administration (Babalola and Hull, 2019a; 2019b), but this does not extend to the rural and peri-urban areas (Babalola and Hull, 2019a). Rural and peri-urban dwellers occupy and use land according to African customary law (which includes customs that are certain, reasonable, observed, and have existed for a long time) (Ndulo, 2011). These communities depend on traditional authorities to access land. Customary law is not recognised in the Constitution and hence occupies an informal space from a legal perspective. Customary and statutory land administration processes and associated institutions in Nigeria operate as a hybrid administration system with little communication or mutual acknowledgement of their roles in society.

Effective and efficient LAS with an appropriate legal framework are essential to ensure tenure security (Subedi, 2016; Ghebru and Okumo, 2016; 2017; Otubu, 2018). To achieve this in land reform projects, researchers and practitioners aim to understand the LAS of a country in context using a conceptual framework to guide cadastral system development (Hull and Whittal, 2019). The 3S conceptual framework was developed to ensure the three goals of success, sustainability, and significance are present in developing a cadastral system (*ibid*.). It is centred on human rights, pro-poor policies, and good governance. These triple components of the framework help guide cadastral system development in terms of customary land rights. The 3S conceptual framework is reflected in this study.

This study focuses on the LASs and their legal frameworks in Nigeria, Kenya, and South Africa. The paper aims to make recommendations for the improvement of the Nigerian LAS based on existing examples of successful and unsuccessful land reform in Africa, from which lessons can be drawn using the conceptual framework for LASs and legal frameworks. The methodology of the paper is discussed in section 2 providing justification for selected conceptual framework and case study areas. Section 3 is divided into two parts LASs and their legal frameworks in each of the case studies areas are discussed in the first part (see sections 3.1 to 3.4) while HRLP conceptual framework is used to assess the LASs and their legal frameworks in the second part (see sections 3.4 to 3.6). Understanding the lessons for Nigeria is presented in section 4. The conclusion is presented in section 5.

2 Methodology

2.1 An HRLP Conceptual Framework for assessing land administration system and their legal framework

Generally, the law is subservient to the constitution of the state, the highest law in the land. Land policy directs the development of land laws and institutions to deliver on policy goals.

But these must be conducted in line with the provisions of the constitution. The study begins by assessing the contexts in which land is administered in the case study states, the constitutions of these states, and the land policy and laws. The HRLP conceptual framework is suitable for this assessment because it drives a pro-poor objective with a constitutional focus in customary land rights contexts. The HRLP conceptual framework is selected to assess LASs and their legal frameworks for land administration in Nigeria over other land administration assessment frameworks because of the following reasons:

- It looks at reform of LASs and their legal frameworks from a constitutional perspective which other LAS assessment frameworks lack.
- The pillars of assessment are based on human rights, rule of law, and legal pluralism principles as related to LASs.
- An absolute credence to the role and processes of customary land administration and value of African customary law is derived from this framework.

The HRLP conceptual framework is built on three pillars: human rights, the rule of law, and legal pluralism (Babalola *et al*. 2022). Babalola *et al* (2022) state that the evaluation area (constitution), elements, and potential indicators of the framework should be relevant to LASs and their legal frameworks development (see Table 1). The LASs context evaluation area is critical in the first part of this study. However, the second part relates to the legal framework, which deals with constitution and land policy.

Lastly, the decision to use the LASs-legal framework context evaluation area is borne out of the fact that land reform in Nigeria relates to LAS and its legal framework reform. The logic of land reform in Kenya and South Africa was also in tangent with LASs and its legal frameworks (Alden Wily, 2018a). The HRLP conceptual framework for assessing LASs-legal framework from a constitutional focus is employed to evaluate Nigeria, Kenya and South Africa's LAS reform concerning their success, sustainability, and significance for peri-urban dwellers (Babalola *et al,* 2022).

Table 1. Elements of a constitution that address human rights, the rule of law and legal pluralism

Elements	Potential Indicators
Human rights	Forced evictions, expropriation with or without adequate compensation, record land rights whether registered or unregistered, protection against state interference and powerful groups, recognition of indigenous laws, non-discrimination and human dignity, equitable rights and tenure, equitable access to land, an integrated and sustainable approach to Land Administration.
Rule of law	The clarity in the law, availability in a local language, enactment through democratic procedures,

Legal pluralism	substantive demand (civil and political rights, justice, and social welfare), accommodation of social rules and protection of social tenures, the exclusive power to customary institutions, recognition of customary law, local dispute mechanisms and social justice, devolution of powers, hierarchy, and self-determination.

2.2 Selection of Case Studies

The study adopts a multiple case study approach, drawing cases from Nigeria, Kenya, and South Africa in Sub-Saharan Africa (SSA) as the largest economies in their respective regions (West, East, and South). Based on Bills of rights and promotion of participatory democracy, it is a common saying that Kenya's constitution draws much from South Africa's constitution (Fuo, 2015). These cases are selected because "Kenya became the African country with the greatest extent of registered land, and therefore also the greatest field for the study of the lessons of registration" (Anderson, 2006: 13). Also, Kenya embarked on land reform culminating in the Community Land Act, 2016 (CLA) that could provide valuable lessons for other SSA countries.

Kenya is selected as one of the case study area as there is strong legal recognition of community property landholding (Alden Wily, 2018c). The implication is that the legal framework for land administration provides for social entities to be legal owners. The mechanism for registration of community property is made readily available and flexible with the interests of individual and family in the community property recorded, respected, and recognised under "collective tenure as derivative rights" (Alden Wily, 2018c:7). Community and private property are equally protected as indicated in relevant legal statements, provisions of the law, and Court rulings interpreting the law. The use of customary rules in 'collective property management' which provides for community land governance is provided.

Within the Nigerian Federation, there are competing LASs and contradictory laws (Ukaejiofo 2008). The first author is a Nigerian, so the issues faced in the country are thus of particular interest. At the same time, he also has the advantage of the knowledge of culture and language, providing advantages in research on LAS in that country.

South Africa LASs and associated legal frameworks recognise collective tenure of indigenous people through the Extension of Security of Tenure Act, No. 62 of 1997 (Alden Wily, 2018c; Fisher and Whittal, 2020). A 'strong' legal provision for community landholding is provided in South African legal framework (Alden Wily, 2018c). More than 90% of individual properties in urban and rural areas are formally registered, signifying a high level of recognition and respect for land rights. More than 45% of land registered in the formal land registry is registered in the name of women. A clear provision in the law is made for the management and maintenance of property held under condominiums. A mix of customary and statutory tenure are recognised within the existing legal framework, recognising 70-90% of both urban and rural population (*ibid*.).

Some say that South Africa's land reform programme has failed due to the logic adopted for land reform (Cousins, 2016). Many, particularly in rural areas and in informal settlements, suffer from insecure tenure. However, 13,6% of citizens have benefitted from the policy of providing free land (ownership) and housing since 1994. Ownership of dwellings in SA is reportedly nearly 60% with 52.5% fully paid off (Statistics South Africa, 2018; Fisher and Whittal, 2020). LAS and legal framework for land administration is mainly based on a formal system.

The study adopts a desktop review of secondary data using a 'text-based approach.' Policy documents, statutes, magazines and newspaper articles, regulations, books, conference proceedings and journal articles related to Nigeria, Kenya, and South Africa are used.

3 Case studies

3.1 Land administration systems and their legal frameworks reform in Nigeria

In Nigeria, problems associated with institutional, legal, and spatial frameworks for land administration have led to an overwhelming burden of unregistered land rights . Bureaucracy in assessing land administration services affects governance issues (Birner and Okumo, 2012). Economic power constrains customary landowners from registering their land in the formal land registry (Babalola and Hull, 2019b). There is a lengthy procedure of land registration system in Nigeria –the World Bank (2017) ranked Nigeria's economy as 169 among 190 countries based on the ease of registering land. It takes an average of 12 steps and 70 days to complete registration, costing 10.5% of the property value. Perhaps unsurprisingly, less than 3% of Nigerian land is registered in a formal land register (Adeniyi *et al.* 2018).

The legal framework for land administration does not support pro-poor land administration systems (LAS) and pro-poor land tools. Despite the existence of the Land Use Act No 6 (LUA) of 1978 for over four decades, the existing legal framework for administering land has failed to deliver a LAS that will sufficiently improve the registration of land in Nigeria (Thontteh and Omirin, 2015; Ghebru and Okumo, 2017; Adeniyi *et al*. 2018). The institutional framework under the LUA established a Land Use and Allocation Committee (LUAC) to assist each Governor in implementing the LUA in urban areas. Similarly, Land Allocation and Advisory Committees (LAAC) have been established to assist in implementing the LUA in rural areas, yet most of the Local Government Areas have no LAAC (Babalola and Hull, 2019a). These challenges among others hinder land rights holders from registering their land (Nwuba and Nuhu, 2018).

Over four decades into the operation of LUA, it has failed to achieve the objectives of its enactment (Otubu, 2012; 2018; Babalola and Hull, 2019a). Central to the shortcoming of the LUA is the inability to provide tenure security for the rural and peri-urban populace (Atilola, 2010; Babalola and Hull, 2019a;). Technical, institutional, socio-cultural, and political reasons are identified as factors hindering the transformation of the land tenure system under the LUA (Atilola, 2013). The inadequacies of the current LUA cause agitation for its review (Smith, 2007; Otubu, 2012; 2018; Ibiyemi, 2014; Babalola and Hull, 2019a). There is a need to provide a better strategy to enable the LAS to work and provide services to the citizens of Nigeria.

The spatial framework for land administration in Nigeria relies on conventional techniques for recording land rights (Babalola and Hull, 2019b), such as fixed boundaries over visible boundaries. The over reliance on conventional techniques excludes informal and customary land rights holders which are in peri-urban and rural areas (*ibid*.). The use of conventional techniques for recording land rights is aimed at individual title ownership which is concentrated in the urban centre (Ghebru and Okumo, 2017, Babalola and Hull, 2019b). To record customary land rights, the use of pro-poor land tools is advocated to provide a pro-poor LAS. The Social Tenure Domain Model (STDM) and Land Administration Domain Model (LADM) have been used to test the applicability of pro-poor land tools (see Babalola *et al*. 2015; Babalola *et al*. 2017; Babalola and Hull, 2019b).

Nigeria has been grappling with LAS and legal framework reform since the 1960s. In this context, LAS reform may involve the change in the terms and conditions of how information about the tenure, value, use, and development of land is determined, recorded and disseminated. The current LAS and legal framework stem from independence in 1960 with the land tenure law of 1962 and subsequent enactment of LUA. The aim of the LUA was to unify the land tenure system in Nigeria, provide efficient and equitable LAS, ensure the redistribution of land, make land readily available for Nigerians, and eradicate land speculation. The current constitution and land policy failed to consider the needs of the rural poor and are confusing and contradictory (Adeniyi, 2011; Babalola and Hull, 2019a).

The Nigerian land reform is meant to address LAS and legal reform (Mabogunje, 2010). The reform includes but is not limited to: removing the provisions of amendment of the LUA from the Constitution, revoking the powers of the Governor to consent to mortgage transactions and assignment of land, and removing the uncertainties hindering Nigerians from enjoying possessory rights to land (Mabogunje, 2010: 10). In respect of removing the uncertainties from enjoying possessory rights to land, Sections 34 (2) and 36 (2) of the LUA are crucial.

LAS and legal reform have been on the government's plan since the Presidential Technical Committee on Land Reforms (PTCLR) was set up on 2 April 2009 to address the problems emanating from the LUA (Mabogunje, 2010). The objectives are: to provide technical assistance to state and local governments; to create a nationwide land cadastre; to determine individuals' 'possessory land use' rights by adopting best practices and appropriate technologies; to identify locations and registration of title holdings; to ensure that boundaries of land and title holdings are demarcated in such a way that communities, hamlets, villages, village areas, towns, etc. are recognisable; to encourage and assist state and local governments in providing an alternative mechanism for land ownership conflict resolution apart from the formal mechanism; to make recommendations for establishing the national depository for land title holdings and records in all states; to make recommendations for establishing a tool for land assessment in both urban and rural areas in all parts of the federation; and to make any other recommendations which provide practical, simplified, sustainable and successful land administration in Nigeria (Mabogunje, 2010: 11).

A decade after the formation of the PTCLR, land reform in Nigeria is at a crossroads because of a misconception of what constitutes land reform. Two pilot studies adopted systematic land titling (Mabogunje, 2010; Atilola, 2013; Oluwadare and Abidoye, 2020). Kano and Ondo States

were adopted for the pilot studies (Mabogunje, 2010). Oluwadare and Abidoye (2020) argue that the critical factors hindering the sustainability of land titling in Ondo State are lack of capacity building, cost of financing, and lack of political will. These pilot studies fly in the face of several studies that have identified that land titling does not address customary land tenure systems; instead, individualising landholding creates avenues for elites and the wealthy to accumulate land. The accumulation of land by the elites hinders the tenure security of both rural and peri-urban dwellers. Kenya and Tanzania are good examples of the impact of land titling on land transactions in SSA (Place and Migot-Adholla, 1998).

Place and Migot-Adholla (1998) state that land registration and titling have a weak impact on the perceived land rights of farmers, credit use and terms, crop yields, or concentration on landholding. They further reiterate that despite registration and titling, incidences of land disputes are reported with low land rental market activities despite the legal affirmation of ownership rights provided by the registration and titling. Pinckney and Kimuyu (1994) found that land titling in Kenya had not increased transactions in land and that the resilience of customary tenure contradicted the impact. The government of Tanzania believes that land titling will result in the loss of equity in landholding (*ibid.*). The experiences in Kenya and Tanzania show that land titling is likely not to provide the required tenure security in customary areas. Following these lessons, land reform in Nigeria has been criticised for its lack of pro-poor focus on land in the rural areas (Atilola, 2010).

Nigerian land reform focuses on eight themes: equity, rural/peri-urban development, non-state actors, participation, conflict management, land documentation, conservation, and industries (Saeda and Barau, 2009: 6). Six out of these eight addresses LAS and legal reform, which is the subject of this paper, which principally addresses the official recognition of customary law, tenure, and administration in the LUA and the Constitution. LAS and legal services may be inefficient and ineffective as state institutions face numerous challenges. These challenges relate to a lack of human resources, a lack of equipment, a deficit in ICT infrastructure, a lack of guidelines for land registration, a lack of awareness about land policy and land law, and corruption. Their LAS and legal services are improved when state institutions do not experience these challenges. In Nigeria, LASs are bereft of any clear and coherent policy direction, which is a problem for land rights-holders (Otubu, 2018). LAS is “politically undemocratic, economically unproductive, but also socially segregative, particularly in its urban and non-urban dichotomy" (*ibid*:108).

The rest of this paper conveys understanding of LASs and their legal frameworks in Nigeria, Kenya, and South Africa. The methodology of the study is then explained in section 2. After that, Section 3 applies the HRLP conceptual framework in Nigeria, Kenya, and South Africa. Section 4 provides lessons for Nigerian LAS and its legal framework, with the conclusion in section 5.

3.2 Land administration systems and their legal frameworks reform in Kenya

The land question confronting Kenya revolves around insecure and unclear property rights, which contributes to the inability of the government to address issues relating to poverty, global warming and climate change (Kieyah and Kameri-Mbote, 2010). The failure to address these

problems threatened the nation's social, political, and economic well-being (Kameri-Mbote and Kindiki, 2009). The issue of the land question has emerged as central on the agenda of the government of Kenya, if violence like the one experienced by the disputed presidential election in 2008 is to be avoided (Government of Kenya, 2008). Since then, the Kenyan government has aimed to achieve sustainable development by reducing poverty and transforming the country into a newly industrialised nation (Njuki, 2001). To achieve this, the government of Kenya abandoned the national land policy approach practised since the 1950s. This approach had been centred around providing tenure security by replacing customary rights with leasehold or freehold issued to individuals or corporate entities (Alden Wily, 2018a).

The government plan paved the way for Kenya's new *Community Land Act*, 2016, under Article 63(5) of the Constitution (Government of Kenya, 2016). Four land laws were enacted following the Kenya Constitution of 2010: The *Land Act*, 2012; the *Land Registration Act*, 2012; the *National Land Commission Act*, 2012; and the *Community Land Act*, 2016 (CLA). Ownership of land vests in communities and is managed under Article 66 of the Kenya Constitution. Community land can be held under customary, freehold, leasehold, and other tenure systems recognised under this Act or other written law (Section 4 (3) a-d of the CLA, 2016). The CLA aimed at protecting Kenyan community land rights by providing for collective property rights, which can be held as community land in common and held under a collective title deed (CLA, Section 14) and collective ownership of derivative rights with non-superior to the other (CLA, Section 27). Also, the CLA 2016 provides for community land governance and settling disputes on community land using an alternative dispute resolution mechanism (CLA, Section 39). Section 37 of CLA provides avenues for land access by foreign investors with stringent guidelines that balance the CLA's twin objectives of ensuring tenure security of community land and promotion of economic development. CLA's focus was on tenure security, land restitution and economic development. Providing tenure security formalisation was strongly supported by Kenya Constitution as a means of "double-locking rights" (Alden Wily, 2018a: 10).

3.3 Land Administration Systems and their Legal Frameworks in South Africa

South Africa is experiencing a land question which revolves around skewed land ownership. This stems from the former racial segregation policy implemented as Apartheid (Kloppers and Pienaar, 2014). These legislative measures limited the ownership of land by those not classified as white – those excluded were those classified as black, coloured, Chinese, and Indian. The limitation on black land ownership resulted in the post-apartheid government embarking on a comprehensive land reform programme. This includes land restitution, land redistribution, and land tenure reform. These three pillars of the land reform programme have a solid constitutional basis. Firstly, section 25(7) of the Constitution (1996) supports land restitution by stating that after 19 June 1913, whoever is deprived of property because of past racially discriminatory laws or practices is entitled to restitution or equitable redress. Secondly, section 25(5) relates to land redistribution (one of the three pillars of land reform), which makes the State responsible for taking "reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis." Thirdly, section 25(6) addresses land tenure reform to improve land tenure security. Despite the constitutional

support of South African land reform, it has failed due to inappropriate 'logic of land reform' (Cousins *et al*. 2005; Cousins, 2016: 1).

The present LAS and legal framework stem from the inherited Dutch and British policies. The South African land policy aims at addressing the injustices of apartheid, fostering national reconciliation and stability, underpinning economic growth, improving household welfare, and alleviating poverty (UNDP, 1994). South Africa has been engaging with LAS and legal framework reform since 1994. For South Africa, the current LAS and legal framework stem from independence in 1994, with the enactment of the Communal Land Tenure Policy and subsequent legislation of Interim Protection of Informal Land Rights Act No. 31 of 1996. These two laws contradict each other, transferring full ownership of customary land to traditional authorities and depriving land rights-holders of their land (Centre for Law and Society, 2015). The transfer of land ownership to traditional leaders contradicts the assertion that "Land belongs to the people; people belong to land" (Hull, 2019: 154).

3.4 Human Rights, Rule of Law, and Legal Pluralism Conceptual Framework in Nigeria

3.4.1 Human Rights

Forced eviction is a common practise in Nigeria in the name of “public interest” which are prominent in the cities (Ocheje, 2007; Ani, 2022) such as Port Harcourt, Lagos, Abuja, and Ado-Ekiti (Ocheje, 2007). In Ado-Ekiti, farmers were displaced and farmland destroyed in an attempt to construct an airport. This resulted in litigation and the farmers won in the High Court. Despite their victory they are yet to be fully compensated for their loses (Ani, 2022). Expropriation with or without adequate *compensation is an issue* in Nigeria**.** Compensation must be “prompt payment of compensation” (Constitution of Nigeria, 1999: 20). Compensation payments are not ‘prompt’ and are not ‘adequate’. Compensation are only paid on improvement on land with no compensation on land itself (Otubu, 2014). Lack of payment of compensation on land is a violation of human right principles. There are several instances where there is compulsory acquisition without compensation (Ibiyemi; 2014; Otubu, 2014; Babalola and Hull, 2019a).

Recording land rights whether registered or not registered is questioned under the LUA. The non-registration of land rights (whether freehold or leasehold) is a violation of human rights principles of the HRLP conceptual framework of 'recording land rights whether registered or unregistered' following titling theory which promotes registration as providing a guarantee of land rights and tenure security. Hence the Constitution should specify and direct the land policy in this direction.

Nigeria's 'agrarian question' has persisted since independence in 1960 which affects the *protection of customary land rights holders against the state and powerful groups.* Social, economic, political, and technological reform impacting the agrarian question varies over the development of the independent States and Nigerian Federation (Mafeje, 2003). The current agrarian question commenced with the promulgation of the Land Use Decree of 1978 (LUD), entrenched in the Constitution of Nigeria and remains to date in Section 315 (5) of Constitution

of Nigeria. The objectives of the enactment address litigation over the title to land, streamlining and simplifying the management and ownership of land, making land readily available to all citizens, addressing government access to free land for public development purposes, limiting the activities of land speculators, and removing the excessive influence which certain traditional rulers have on land (Mabogunje, 2010; Atilola, 2010). An important purpose of the agrarian reform was to unify the land tenure system in Nigeria but it led to the marginalisation of customary land tenure systems. These were believed to impede agricultural and economic development.

Respect for all land rights in the Constitution of Nigeria may be questioned as *indigeneous laws are not recognised in LAS*. The position of land rights in the Constitution was not mentioned for the customary land rights. Protection of property rights is provided in Section 44 of Constitution of Nigeria. This non-recognition of customary rights shows the extent of discrimination against customary legal framework for land administration. As per the equitable rights and tenure, and equitable access to land, the current legal framework for land administration is deficient (Babalola and Hull, 2019a). The LUA causes a series of problems for customary land administration. The LUA caused tenurial changes in rural areas with significant effects on land used for farming (Williams, 1992; Chigbu and Klaus, 2013). Due to the nationalisation of land in Nigeria, ownership rights in freehold were downgraded to use rights held through leasehold. The use of leasehold means that in customary rural areas, the community can no longer hold their land in perpetuity, managing use to fit the needs of their people. Instead, state-managed leaseholds have a finite duration and can also be administered independently of traditional leadership. A further impact is that land rights are no longer flexible along the continuum of land rights — they are now fixed as leaseholds. The principal advantages of customary landholding – flexibility and adaptability – are terminated (Chigbu and Klaus, 2013).

An integrated and sustainable approach to land administration is lacking. There are several challenegs hindering a sustainble LAS. for instance, in land administrative sevice delivery there is lack of awareness of the processes and procedures of land administration (Ghebru and Okumo, 2016). In terms of efficiency and effectiveness, the system of land registration takes a very long time. There is widespread corruption resulting in the payment of unofficial fees (*ibid*.). With the present situation, LAS lack *signficance*. Hence *sustainability* is not sure and success cannot be achieved.

3.4.2 Rule of Law

There are inconsistencies and contradictions in LUA which results in *lack of clarity in law*. For instance, the status of customary land tenure is undefined in the LUA and the constitution (Babalola and Hull, 2019a). The determination of the dispute arising from compensation payment as specified in the LUA is inconsistent with the rights of the citizens as provided in the constitution. In respect of *availability in local language*, the constitution of Nigeria and any other legislation are not available in local languages. Despite the repugnancy clause in the Constitution of Nigeria, the thicker conception of the rule of law is not observed in the Constitution of Nigeria. In Nigeria there is not legislative framework ensuring *public participation* in the process of law-making. The provisions of the Constitution show

commitment to human rights principles, true democracy, constitutionalism, and social justice regarding land administration. The current constitution of Nigeria is a millitary enactment which lack democratice procedures.

3.4.3 Legal Pluralism

The undefined status of customary law in the Constitution of Nigeria may be problematic. The status of customary law questions may put the rule of law at a crossroads, hindering the implementation of legal pluralism. The provisions of the Constitution of Nigeria show commitment to human rights principles. However, strong democratic constitutionalism and social justice are not evident (Diala, 2103; 2018; Diala and Kangwa, 2019). *Devolution, decentralisation, and self-determination regarding land administration* are missing. Constitution of Nigeria does not recognise autonomy and devolution of powers. The customary and statutory legal framework of land administration cannot be formally identified as legitimate, as traditional leaders are not recognised in Constitution of Nigeria. Section 280 of the Constitution of Nigeria specifies the possible establishment of the Customary Court of Appeal for each State. However, the identity of such Customary Courts in Nigeria is questioned (Diala, 2019). Diala (2018: 20) quoting Osborne CJ[1] states that there is "great danger" in not being able to enforce an individual and group's right to culture. This amounts to a lack of legal flexibility. Legal flexibility pertains to LAS, in which various legal systems can evolve and adapt to customary laws in rural and peri-urban areas and some aspects of statutory regulations in urban areas (Nkwae, 2006; Arko-Adjei, 2011). This shows lack of *accommodation of social rules, protection of social tenures, and exclusive power to custoamry institutions*

The Constitution of Nigeria does not support legal pluralism (Diala 2018). Diala states that the Constitution of Nigeria should define the position of customary law. The Constitutional imperative to unify land rights and tenure is not borne out since customary land rights are excluded. The market value approach to land rights favours elites, and individual landholding suppresses the socio-institutional strategy aligned with customary land rights and tenure.

3.5 Human Rights, Rule of Law, and Legal Pluralism Conceptual Framework in Kenya

3.5.1 Human Rights

Forced eviction is a common practise in Kenyan cities caused by conflicts in land rights, non-payment of excessive land and house rents, and urban development (Otiso, 2003; Amnesty International, 2015 Angote, 2018). There are guidelines on eviction and resettlement (Eviction and Resettlement Bill, 2012) with the constitution not having any clause dealing with eviction issues. Despite the guidelines on eviction, there is a report on abusive eviction in Mau Forest (Human Rights Watch, 2019; 2020). *Expropriation with adequate compensation* in protection of property rights is clearly stated in Article 40 with the Constitution specifying "prompt payment in full of just compensation" (Constitution of Kenya, 2010: 23). Several people are evicted without being compensated (Human Rights Watch, 2020).

[1] Lewis v Bankole (1908) 1 NLR 81

The provisions of the constitution show commitment to human rights principles, true democracy, constitutionalism, and social justice regarding land administration. Human rights principles are identified, one being that land is either delimited or demarcated depending on the context. Substantively, the Constitution of the Republic of Kenya provides for the respect of land rights, *whether registered or unregistered***.** The land belongs to people as communities and *individuals* (Article 61(1) of the Constitution of Kenya, 2010). The land has been defined both legislatively and customarily by classifying land as public, community, and private land in Article 61(2). Article 68 of the Constitution promotes legislation to protect land rights holders against *the interference of elites and powerful groups* who may want to accumulate land. The Constitution instructs that "parliament shall enact legislation ensuring that investments in property benefit communities and their economies" (see Article 66(2)).

Chapter five of the Kenyan Constitution specifies the principles, the classification of land, how land use is regulated, the establishment of the National Land Commission, and the legislation on land. These aspects show *non-discrimination in culture, law, and land administration*. The socio-institutional and economic approach to land rights is the basis of land administration in Kenya, with jurisdiction given to each legal framework. The socio-institutional approach makes land administration benefit land rights holders with collective tenure recognised by the Constitution. The mentioning of collective tenure in the Constitution provides for social rights of *equitable rights and tenure*.

The legal framework will be *significant* for the rural and peri-urban populace. Constitutional provisions show the State's obligation to regulate land administration to benefit the rural and peri-urban people.

Equitable access to land is achieved to some degree with the provisions of the law in Kenya. Respect, recognition and recording of existing rights in land are the ultimate principles driving the enactment of the CLA (see Sections 14 & 34). Provisions of Section 6 of the CLA and Article 63 (4) of the Constitution state that no county government shall sell, dispose of, transfer, or convert land held in trust for private purposes. Alden Wily (2018a) asserts that equitable legal pluralism and an advanced degree of integration in property principles have been achieved. The CLA recognises the transparency, cost-effectiveness, and participation of community members in documenting, mapping, and developing inventory for community land (Section 8(2) of CLA, 2016). Community land is registered by giving public notice through the Cabinet Secretary. The public notice includes the name of the community, state of adjudication, advises interested persons to lodge their claim, creates a community land registration unit, and provides a notice period of sixty days (Subsection e). If adequately implemented, vital principles of good governance and responsible land management may be realised through this Act.

Despite the land policy commitment to collective tenure and community-based land administration, the State still owns ancestral forestland (*ibid*). This forest land is protected, which means it cannot be used for a local community's benefit. The ancestral land still in the hand of the State is against the objective of the CLA. Kariuki and Ng'etich (2016) notes that it is essential to ensure environmental justice by recognising and respecting the rights of communities whose livelihoods depend on access to natural resources. However, the enactment

of Gazettes to declare protected areas is still necessary - land grabbing is not a thing of the past (Kariuki and Ng'etich, 2016). The declaration of protected areas does not involve individuals and communities who derive their livelihoods from such areas (*ibid*). The declaration process is an aspect of public participation that needs to be addressed. There are examples (some in South Africa) of protected natural resources being shared with local subsistence communities in a managed manner. Local buy-in to conservation and sharing of resources benefits all (Roe, *et al.* 2009; van Wilgen *et al*. 2013).

Integrated and sustainable approach to land administration are embedded in the principle of land policy as stated in part 1 of Chapter 5 of the Constitution of the Republic of Kenya. Article 60 specifies that land in Kenya shall be held, used, and managed in an equitable, efficient, productive, and sustainable way, which is an important principle in ensuring land rights security (Article 60(1b)). The constitutional foundation in Kenya supports a new property regime. Community land means land declared as such under Article 63(2) of the Kenyan Constitution, including land converted to community land under any law.

3.5.2 Rule of Law

Despite the Constitution overriding the customary law that is inconsistent with the Constitution (called a repugnancy clause), the thicker conception of the rule of law is observed in the Kenyan Constitution. In Kenya public participation which allow for *democratic procedures* is used in legislative and policy reform (Peixoto *et al.* 2016; Birgen and Okoth, 2020). To these effect three Bills is considered to give effect to Constitutional provisions on public participation (*ibid)*. However, Eredi (2021) argue that the realisation of the right is problematic. The problematic aspect relates to the rights not satisfactorily defined in the constitution, or statutes, or judicial decisions. The thorough implementation of a thicker conception of the rule of law should overcome the deficiency in explicit legal pluralism in post-colonial Kenya.

3.5.3 Legal Pluralism

Accommodation of social rules, protection of social tenures and exclusive power to customary institutions is achieved in Kenya. To achieve the objectives of CLA, the Act in Sections 7 & 15 established the Community Assembly and Community Land Management Committee (CLMC) subject to the approval of the Community. The community Assembly elects members of the CLMC. The CLMC conducts the day-to-day land administration, granting collective and derivative rights under CLA. The registered rights in land are vested in the Community, while the unregistered community land is vested in the county government (See Sections 2 & 6, CLA). The vesting of registered land and unregistered land in the community and county government, respectively, implies that community land, registered and unregistered, is recognised and legally protected (Alden Wily, 2018a). The CLA does confer use rights in perpetuity for community land (Section 4(3)b of CLA, 2016).

Since independence and before the current CLA reform, the titling programme has compounded the land problem in Kenya (Alden Wily, 2018b). The land problems have primarily been addressed by the CLA, as discussed. Alden Wily (2018a) states that collective tenure and

community-based land administration are now given recognition as the basis for production and improvement of the livelihood of a significant portion of the population.

The communities are protected spatially and legally. Section 2 defines "community as *a consciously distinct and organised group of users of community land who are citizens of Kenya"* and share a similar culture, common ancestry, common interest, geographical space, ecological space, or ethnicity (The Republic of Kenya, 2016: 528). This definition is applicable across all contexts in Kenya. The CLA provides for the production of a cadastral map of community lands using approximate boundaries (Section 11 of CLA; Section 18 of Land Registration Act, 2012). The approximate boundaries are spatially defined and legally recognised. A fixed boundary may be surveyed on request – this would then be entered into the cadastral register.

The enactment of the CLA of 2016 was centred around the active participation of community members in the land administration process. Section 48 (1) instructs the Cabinet Secretary to ensure public participation. CLA (Section 15 of part III subsection 4(d)) provided for the "… *participation among community members in dealing with matters about the respective registered community land*." For the enactment to be significant, stakeholders' involvement in the change process sets the path for success and sustainability.

Alden Wily (2018a: 669) states, "equitable legal pluralism and a remarkable degree of integration in property principles have been achieved." The socio-institutional and economic approach to land rights is the basis of land administration in Kenya, with jurisdiction given to each legal framework. *Recognition of customary law, local dispute mechanism, social justice devolution of powers are attributes inherent in Kenya legislation on land***.** In Kenya's constitution, customary law is recognised as long as it is not inconsistent with the provisions of the constitution. The constitution in Chapter 5 Section 60 provided for the settlement of land disputes using recognised community initiatives. In Section 10 of the Kenyan Constitution, one of the key national values and principles of governance is *social justice.* Also, in the Bill of Right (see Section 19) the constitution upholds the promotion of *social justice* to recognise and protect human rights. Community management of land provides for *devolution of powers* in land administration.

3.6 Human Rights, Rule of Law, and Legal Pluralism conceptual framework in South Africa

3.6.1 Human Rights

Despite the procedural and substantive requirements for obtaining order for eviction in South Africa**,** *forced eviction* is still common practise in South Africa cities which is attributed to "development-induced" displacement (UN-HABITAT, 2013: 13). There is guidelines on eviction and resettlement (Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998). Despite the guidelines on eviction which indicates that an Order of the Court must be obtained there is a report on abusive eviction during the pandemic in South Africa (Dube and Du Plessis, 2021). *Expropriation with adequate compensation* in protection of property rights is clearly stated in Section 25 with the Constitution specifying "just and

equitable" payment (Constitution of South Africa, 1996: 23). Over 60 000 informal housing structures were demolished resulting in eviction without relocation (Dube and Du Plessis, 2021).

Section 25 (2) of the Constitution (1996) states that property rights can be expropriated. Expropriation is subject to compensation of "the amount of which and time and manner of payment of which have either been agreed to by those affected or decided or approved by a court" (Constitution of RSA, 1996: 23). This provision of the Constitution shows adherence to negative obligation by the State. Section 25(3) specifies that the amount of compensation and the time and manner of payment must be equitable by balancing the public interest and the interests of those affected. Public interest is clearly defined in subsection 4 to be that interest that pertains to the nation's commitment to land reform and that provides equitable access to all of South Africa's natural resources.

Protection of land rights whether registered or unregistered as well as protection against state interference and powerful groups are observed in South Africa constitution. Basic human rights principles are entrenched in the South African Constitution, with a clear focus on respecting, protecting, promoting, and fulfilling these rights (see Chapter 2 of Constitution, 1996). The White Paper on South African Land Policy reflects human rights principles (DLA, 1997), affirming that "tenure systems must be consistent with the constitution's commitment to basic human rights and equality" (*ibid*.: 16). This White Paper shows the relationship between the citizens and the State by expressing that the State should provide security of tenure to the vulnerable, provide equitable access to land, and prevent unfair evictions. However, interference by the State against the individual is questioned (Ovens *et al.* 2014). Powerful and elite groups still interfere in the land administration of individuals (Skosana, 2022; Mdau, 2022; Zulu, 2022).

In terms of *recognition of indigenous laws, non-discrimination and human dignity* accessing land without any form of discrimination in culture, laws, and administration, the legal framework adopted by the State does not adequately direct the respect and protection of interests in land (e.g., informal, and customary land interests) while it does so for land rights (lack of positive obligation). Some, such as Cousins (2017: 10), go so far as to critique the system as relegating customary tenure to "second-class legal status". "Supremacy of ownership" sums up the land reform policy of the State ― this affects customary tenure which in many areas has fallen on the sword of titling programmes (Hull *et al*. 2019: 20). The government needs to provide efficient and effective land administration and legislation to protect customary land rights and thus improve tenure security (Hull *et al*. 2019). However, customary law inconsistent with the Constitution or other statutes has no legal force.

The substantive and procedural aspect of human rights concerning LAS **(***equitable rights. tenure and equitable access to land***)** in the South African Constitution is lacking, despite the provisions of Section 25 of the Constitution (see Section 1.3). Informal land rights are protected in South Africa under the Interim Protection of Informal land Rights Act (31 of 1996). According to the Constitution (1996 s 25(1)), communities and individuals are entitled to equal access to land but not equal rights to land. However, the Section 25 (5) encourages lawmakers to take reasonable legislative measures to ensure that citizens have equal access to land. Land

tenure and land rights for peri-urban and rural dwellers are not specified in the Constitution although customary land rights are recognised. The Constitution (1996) sets out the principles of law to which all other legislation in the State must comply. Despite this provision that protect informal land rights, land tenure insecurity still exist in customary areas in South Africa (Tlale, 2020; 2022).

An *integrated and sustainable approach to land administration* in South Africa is limited (Fisher and Whittal, 2020). Although South Cadastral and land information system is awarded a 'world-class', Fisher and Whittal (2020: 391) assert it is a "reputation in decline". Several reasons were attributed to this among which are: inflexibility of the system, non-recording of off-register landholding, legal pluralism and inequality, failed land reform, and lack of data sharing.

3.6.2 Rule of Law

Despite the repugnancy clause in the Constitution, the thicker conception of the rule of law is observed in the South African Constitution. In South Africa there is robust legislative framework for public participation in the process of law-making (Eredi, 2021). A dynamic framework and mechanisms are established by the Municipal Systems Act and the Municipal Structures Act[2] to firmly establish public participation in government issues. The Municipal System Act offers the best ideal for a country's public participation by dedicating a whole chapter.[3] The public participation is fully express in the South Africa constitution (s. 59(1), s. 72(1)a, s. 118(1)a). The duty to promote public participation is mandatory for the three authorities: national government, provisional government, and local governments. This should overcome the highlighted deficiencies. The provisions of the Constitution show commitment to human rights principles, true democracy, constitutionalism, and social justice regarding land administration.

3.6.3 Legal Pluralism

South Africa's constitution *accommodates social rules, protection of social tenures, and the exclusive power to customary institutions*. Drawing from the provisions of the Constitution, legal pluralism is observed in South Africa. A customary legal framework for land administration is observed in South Africa, with Sections 211 and 212 recognising and specifying the roles of traditional leaders. Section 212(2) specifies an institution of traditional leadership on matters affecting local communities and issues relating to customary law and community customs observing a customary law system. Rautenbach (2010) states that deep legal pluralism is a reality in South Africa. The socio-institutional and economic approach to land rights is the basis of land administration in South Africa, with jurisdiction given to each legal framework. However, the socio-institutional approach can lead to land administration benefitting traditional leaders at the expense of their communities. An example is the powers of traditional leaders in the Traditional Khoi-San Leadership Act 3 of 2019 (TKLA), which ignores "participatory and multi-level decision-making processes of customary law"

[2] South Africa, Municipal Systems Act; Municipal Structures Act of 1998.
[3] South Africa, Municipal Systems Act s 16.

(Claassens, 2011; Ubink and Pickering, 2020: 179). This may affect human and social rights, bringing to question the status of legal pluralism.

*Recognition of customary law, local dispute mechanism, social justice devolution of powers are attributes inherent in South Africa legislation on land***.** The recognition of the roles of traditional leaders in the Constitution provides for social systems of land administration and delivery of land rights. However, the neglect of a participatory approach in the processes of observance of customary law may render the customary legal framework *insignificant* for the rural and peri-urban populace. The provisions of the Constitution show the State's obligation to observe customary legal framework for land administration even though, in practice, it may not benefit those it is meant to serve – the rural and peri-urban citizens.

The approach to social tenure does not reflect a pro-poor policy to customary rights (Hull *et al*. 2019) because land administration is highly centralised. The recording of land rights, protecting land rights, and resolving disputes on land are all not in tandem with a pro-poor approach to land administration. Using Fit-For-Purpose Land Administration (FFPLA) in South Africa, Williams-Wynne (2021) reflects that official records of cadastral surveying are the basis of the current LAS, and many legitimate landowners are excluded from this formal LAS. It is proposed to implement FFPLA to improve tenure security for all, which will align the LASs better to the needs of the people (*ibid*.).

4 Understanding the Lessons for Nigeria

Following the use of HRLP conceptual framework to evaluate the Nigerian, Kenyan, and South African cases, recommendations are made for the LAS and its legal framework reform in Nigeria.

4.1 Human Rights

1. The three case studies have forced evictions reported. However, there is policy document indicating how eviction and resettlement must be undertaken in Kenya and South Africa with South Africa indicating there must be a court order before eviction can take place. To improve LASs and their legal frameworks, human rights aspect of the constitution as per evictions procedures and resettlement must be gazetted and implementation of same made mandatory.
2. The Nigeria Constitution provides for compulsory acquisition in the overriding public interest and public purposes. It further states "prompt payment of compensation" for such expropriation. The constitutional clause for compensation payment in Nigeria differs from those of Kenya and South Africa. In Kenya, "prompt payment in full of just compensation" (Constitution of Kenya, 2010: 23) based on current market value, is specified. The details of this are left to be defined in other legislation. In South Africa, it is stated that compensation must be "equitable and just" (Constitution, 1996: 23). To improve LASs and their legal frameworks, human rights aspects as per compensation payment must be equitable and just compensation that is based on the current market value. The implementation of the payment of just and equitable compensation must be by a National Land Commission outside the control of the Governor.

3. The LUA clearly defined public interests and public purposes (Sections 28 (2); 51). The 'public interests and public purposes' are undertaken outside of the supervision of the National Land Commission (Babalola and Hull, 2019a). A significant omission was made in the Kenya Land Act, 2012: the public purpose is defined (Section 2) while the public interest is not. In South Africa's case, what constitutes public interest is clearly defined but not public purposes (see Section 25 (3) of the Constitution). Whether public purposes or public interest, the determination of such should be under a National Land Commission and specified in the constitution as in the case of South Africa.
4. The Constitution should recognise the existing rights and interests in land to be legitimate. Community land, either registered or unregistered, should be recognised as current and protected through legal provisions (Alden Wily, 2018a). The LUA contradicts itself in protecting existing land rights as it vests ownership to the Governor of each State, holding it in trust for the use and common benefit of all (Babalola and Hull, 2019a; see section 1 LUA). In South Africa, although existing land rights are recognised and respected through the Bill of Rights in the Constitution (section 25), land interests are not, except for negative legislation preventing the registered owner from exercising their rights (e.g., the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act No. 19 of 1998 and Interim Protection of Informal Land Rights Act 31 of 1996). Both the constitutions of Nigeria and South Africa may improve on this aspect to improve LASs and their legal frameworks.
5. Concerning LAS reform, pro-poor approaches to recording land rights (Enemark *et al.* 2015) should be recognised in a constitution. The spatial and legal protection adopted in Kenya (Section 11 of Kenya's CLA; Section 18 of Land Registration Act, 2012) through delimitation and demarcation can also be adopted in Nigeria and South Africa. Delimitation of community land and demarcation of peri-urban land may help make LASs and their associated legal framework *significant* for land rights holders.
6. Policy and legislation should recognise grazing rights. Section 28 of the Kenyan CLA provides that community land in pastoral communities shall be available for use by the members of the community for grazing their livestock. A similar provision could be provided in Nigeria, which could help resolve the farmer-herder conflicts.
7. Rural and peri-urban land titling has proved not to yield significant improvements for land rights holders. Land titling in Kenya has failed, compounding land problems (Alden Wily, 2018a). However, the Kenyan CLA provides for community land titling. Individual land titling was the former approach in Nigeria and South Africa, causing land reform to face a ‘crossroad’ in Nigeria, and with failure to deliver timeously in South Africa (Mabogunje, 2010; Atilola, 2013; Hull *et al.* 2019; Oluwadare and Abidoye, 2020). To provide for a significant and sustainable LASs and their legal frameworks, policy direction in Nigeria should adopt community land titling.
8. The ownership of, and access to, the resources of ancestral forestland are still hindered despite the provisions of Kenya's CLA, which provides community land for the benefit of the people. The community must hold land rights to ancestral forestland to improve the tenure security of poor rural communities. In Nigeria, forest land is vested in the Governor of the State, and those who rely on its natural resources for subsistence have insecure tenure. The creation of reserves without consultation further threatens their access to essential resources for survival. To improve tenure security ancestral forest

land should be vested in the community which will help in the improvement of the livelihood of the people.

9. Institutions that could assist in the implementation of the land policy are necessary. The National Land Commission (established by Article 67 of the Kenyan Constitution) is saddled with the responsibility to support the implementation of Kenyan land policy. In Nigeria, a National Land Commission is not established in the Constitution which causes implementation issues (see Abugu, 2012; Nwocha, 2016; Babalola and Hull, 2019a). In South Africa, a Land Management Commission is specified in the Green Paper on Land Reform (2011) and in the Land Management Commission Bill Notes 964 of 2013. To improve LASs and their legal frameworks in Nigeria, a National Land Commission should be established through the provisions of the Constitution.

4.2 Rule of Law

10. Policymakers in Nigeria should be aware of the differences in the way land policy may flow from the Constitution. Entrenching the land policy in the Constitution differs from defining the principles that guide the enactment of the land policy. The entrenchment of the land policy itself makes the land policy invariable as political, social, economic, and other changes occur in the country. Constitutional amendments are usually very difficult to undertake – the Constitution cannot be a responsive instrument. In contrast, defining the high-level principles relevant to land and customary law, relying on other legislation for enactment, allows the land policy to change. However, the land policy can then be subject to political manipulation within the principles and provisions of the Constitution. For significance and sustainability of LASs and their legal frameworks, a land policy should be enacted to flow from the constitution rather than entrenching. Hence, Nigeria should henceforth enact a new land policy that draws provisions from the constitution.
11. A participatory, cost-effective approach is recognised in documenting, mapping, and developing community land inventories (Section 8(2) of Kenya's CLA, 2016). This approach can also be incorporated in Nigeria and South Africa to support pro-poor policies to land administration. To improve LASs and their legal frameworks, a participatory approach to land administration at the local level is extremely important. Participation by a community member in land administration may set the pace for success.
12. Public participation in law-making process is present in both Kenya and South African Constitution with Kenya borrowing from South Africa, especially on the Bills of Rights and the promotion of participatory democracy. The approach for public participation in both countries can be incorporated in Nigeria when the need for amendment of the Constitution arises. To allow legal framework for LASs to be significant, the public should be allowed to make significant input into law-making process.

4.3 Legal Pluralism

13. It is necessary to define customary law and customary leaders in the Constitution. The defining of such would support customary land law and institutions that underpin land rights in rural and peri-urban areas. Customary law, institutions and rights should receive equal weight in the Constitution to statutory law, institutions, and rights.

Balancing the position of customary and statutory law in the constitution will help improve rural and peri-urban LASs. The Kenyan and South African cases provide useful lessons for Nigerian LAS and legal framework reform.

14. The nature of the legal framework for LAS in Kenya is useful for Nigeria. The Kenyan Constitution puts statutory and customary tenure on an equal footing by adopting customary land law, collective tenure, and collective governance (Alden Wily, 2018a). Plural tenure regimes and key principles of legal pluralism are embedded in the Constitution. To improve LASs and their legal frameworks, legal pluralism aspects of the constitution of accommodation of social rules, protection of social tenures, and exclusive power to customary institutions are extremely important.
15. Land should be held by the people or community who manage their land. Rural and peri-urban land should be governed by customary law (established and enforced rules and norms). The Kenyan Community Land Act provides for the vesting of land in the community. Despite legislation recognising customary tenure and customary institutions of land administration in South Africa, land is not vested in the people. The Nigeria LUA *nationalised* land and *vested* ownership in the Governor of the State. The control and management of land by the governor contradicts the pro-poor principle. To improve Pro-poor LAS land should be vested in the community who owns the land.
16. Local community-led governance should be adopted to allow for cost-effective land management that can be significant for land rights holders. The different practices of community land management (CLM) are provided by the Kenya Community Land Act 2016 (Sections 7 & 15). Despite the provision for CLM, the practical guidelines for electing the members of the CLM committee are lacking. As noted by Alden Wily (2018a: 17), "popular guidelines are needed" in this regard. The idea of community land management could be replicated in Nigeria and South Africa when the LUA and CLTP are amended. The Report of the Presidential Advisory Panel on Land Reform and Agriculture also promotes the appointment of a land rights protector whose role would be complemented by conflict and dispute resolution mechanisms at local level. In both Nigeria and South Africa, cost-effective means of settling disputes at the local level could be provided for rural and peri-urban dwellers on customary land.

5 Conclusion

LASs, with their legal frameworks, are at the forefront of land reform in Africa. It is conceptualised that reform that will be *successful* must also be *significant* and *sustainable* for all land rights holders. An HRLP conceptual framework was adopted to draw on the strength of empirical-based research using case study methodology. Literature on LASs and legal reform assists in proposing recommendations for the reform of the LASs and their legal frameworks in Nigeria. The experiences in Kenya and South Africa are also relevant and can inform proposals for Nigeria's LASs and their legal frameworks reform. The Constitution in Nigeria, as apex legislation, drives policy, legislation, and land administration institutions. Deficiencies in constitutional principles affect the entire LASs and impact reforms. Three aspects of any constitution relevant to land reform are human rights, the rule of law, and legal pluralism. Human rights require positive and negative obligations imposed on the State (Akandji-Kombe, 2007). Rule of law and legal pluralism should recognise customary law.

Alden Wily (2018a) states that both legal pluralism and integration were attained in Kenyan CLA, which is exemplary but not yet perfect. The Kenyan case is an excellent example of a country's progress in implementing legal pluralism, as exemplified in its Constitution and CLA. The CLA has, over time, been shown to support equity and non-discrimination, and to be relatively free of contradictions. The Kenyan situation is unlike Nigeria's LUA, which contradicts, discriminates and is only effective in urban areas. It has failed to achieve its objectives (Otubu, 2007; 2014; 2015; Babalola and Hull, 2019a). Kenya's CLA provides for the recognition of registered and unregistered but legitimate land rights and interests and makes provision for a foreigner to invest in community land with strict rules which ensure the tenure security of community land and promote economic development.

The Kenyan CLA derives from constitutional principles without which it may never have stood the test of time (Alden Wily, 2018a). However, it is not perfect – there is a lack of political will to implement the law (*ibid*.). The main positive benefits of the CLA are that community-based land rights are legally recognised alongside private lands, leaving no room for inconsistencies and contradictions. From the HRLP conceptual framework as a lens, reflections of the Kenyan and South African experience are used as recommendations for reforming the Nigeria LAS and its legal framework.

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Simon Hull is a senior lecturer and 2019 PhD graduate at the University of Cape Town (UCT). His doctoral research was in the field of customary land tenure reform. He completed his MSc at UCT in the field of digital close-range photogrammetry in 2000 whereafter he spent two years working as a marine surveyor. He spent a further four years completing his articles and is a registered South African Professional Land Surveyor. In 2006 he changed careers and became a high school Maths and Science teacher in a rural village in northern Zululand. He has held his current position at UCT since 2012, where he lectures in the foundations of land surveying, GISc, and cadastral surveying. His research interests are in land tenure, land administration and cadastral systems, and the use of GIS to address Sustainable Development Goals.

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