ASSESSING LAND ADMINISTRATION SYSTEMS WITH THEIR LEGAL FRAMEWORKS:

THE CASE OF PERI-URBAN LAND IN EKITI STATE, NIGERIA

Kehinde Hassan Babalola

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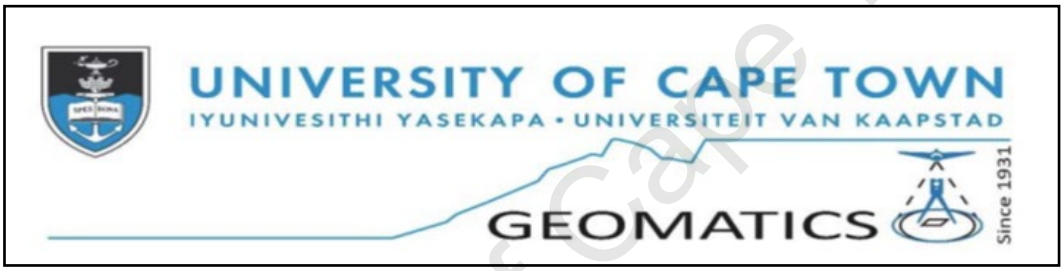

Supervisors

Dr. Simon Hull

Professor Jennifer Whittal

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Declaration

I, **Kehinde Hassan Babalola**, certify that all work in "*Assessing Land Administration Systems with their Legal Frameworks for Peri-Urban Areas of Ekiti State, Nigeria*" with the exception of that which is recognised, is entirely original.

The entire thesis or any portion of it has never been submitted, is not currently being submitted, or will be submitted for a different degree at this university or another.

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Abstract

The coexistence of customary and statutory law, tenure, and administration in peri-urban areas of sub-Saharan African (SSA) countries such as Nigeria may cause conflict and tension. An efficient and effective land administration systems (LASs) and legal frameworks are crucial for ensuring pro-poor objectives in land administration. Women, the vulnerable and the poor who are denied access to efficient and effective land administration services tend to experience tenure insecurity. Nigeria is one of the countries with an inefficient and ineffective LASs. The study explores the possibility of hybrid legal systems contributing to tenure insecurity in peri-urban areas of Southwest Nigeria. This study assesses customary and statutory laws and administration systems pertaining to Ekiti State, Nigeria to understand whether there is legal pluralism.

A case study of customary and statutory laws, tenure, and administration was carried out using primary and secondary data. The study used three peri-urban cases from Ekiti State, Nigeria (Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti) to learn how customary and statutory laws, tenure, and administration operate within the same geographical space. The study adopted Soft System Methodology (SSM), with two analytical frameworks: Responsible Land Management (RLM) and Fit-For-Purpose Land Administration (FFPLA). Moreover, the study used institutional isomorphism theory to determine the conflicting pressure exerted on the customary legal framework, comprising the customary courts and the Customary Court of Appeal of a State (CCAS).

The LASs with their legal frameworks were assessed using text-based and empirical approaches. The study findings show weak and deep legal pluralism in LASs. The assessment leads to developing conceptual tools for assessing LASs with their legal frameworks. On the one hand, the conceptual tool for assessing LASs with their legal frameworks is based on the three pillars of human rights, the rule of law, and legal pluralism, taking a constitutional focus. The study findings revealed conflicting pressure exerted on customary courts and the Customary Court Appeal of a State (CCAS). On the other hand, the

conceptual tool for measuring land tenure security based on three pillars of jurisdiction, legitimacy, and collaboration. The conceptual tools provide understanding of the influence of the hybrid legal system in LASs in peri-urban areas. The understanding of the influence of hybrid system is based on decentralising land administration activities, local land management, self-determination, and autonomy. The framework also incorporates legal and institutional flexibility. Areas of further research are recommended.

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Glossary of Acronyms

ADRM - African Dispute Resolution Mechanism

BLS - Bureau of Land Services

CFRN - Constitution of the Federal Republic of Nigeria

CCAS - Customary Court of Appeal of a State

DFID - Department of International Development

ESTC - Ekiti State Traditional Council

ESURPD - Ekiti State Urban and Regional Planning and Development Law

FFPLA - Fit-For-Purpose Land Administration

HST - Hard System Thinking

LA -Land Administration

LADM - Land Administration Domain Model

LAS - Land Administration System

LAAC - Land Allocation and Advisory Committee

LGAF - Land Governance Assessment Framework

LUA - Land Use Act

LUAC - Land Use Allocation Committee

LGA - Local Government Area

MHUD - Ministry of Housing and Urban Development

MLHPPUD - Ministry of Land Housing Physical Planning and Urban Development

MLHUD - Ministry of Land Housing, and Urban Development

NLRC - National Land Reform Commission

NCLRM - New Continuum of Land Rights Model

NURPA - Nigerian Urban and Regional Planning Act

NGOs - Non-Government Organisations

NSJS - Non-State Justice System

OSG - Office of Surveyor-General

PPA - Planning Permit Agency

PTCLR - Presidential Technical Committee on Land Reforms

RHAS - Relevant Human Activity Systems

RLM - Responsible Land Management

STDM - Social Tenure Domain Model

SST - Soft System Thinking

SSM - Soft Systems Methodology

SSA - Sub-Saharan African

SDGs - Sustainable Development of Goals

SLTR - Systematic Land titling and registration

TLG - Traditional Land Governance

URA - Urban Renewal Agency

WCS - Warrant Chief System

1 Laying the Foundation

"Man must become indigenous in the purest sense if he wishes to develop and expect help from the Light! He should beware of adopting the habits and customs of people alien to his nature, not to mention foreign opinion. To be rooted in one's native soil is a basic condition and alone guarantees health, strength, and maturity!" (Abd-Ru-Shin, 2011: 748).

1.1 Background and Problem

Peri-urban areas exist on the fringe between rural and urban areas where customary and statutory legal systems overlap. The study explores the possibility of plural legal systems contributing to tenure insecurity in peri-urban areas of Southwest Nigeria. It is concerned with the coexistence of a plurality of laws (customary and statutory) in the land administration system (LAS) and how they are used in land administration matters. In practice, customary laws are used by traditional leaders to administer land in rural and peri-urban areas because land access is through customary land tenure. Customs and traditions derive authority from and are interpreted by traditional leaders (see section 1.2.1). Customary land tenure relies on customary law (derived from customs and traditions) in holding rights in land, while statutory tenure relies on the land law of a nation. Statutory institutions use laws enacted by statute to allocate land in rural, peri-urban, and urban areas. For instance, the Ministry of Land, Housing, Physical Planning, and Urban Development (MLHPPUD) and its various departments use statutory law for land administration (see section 5.6.2).

Land rights are generated in peri-urban areas mainly from customary land tenure system (Babalola and Hull, 2019a). The allocation of land rights in peri-urban areas are from two regimes namely: the chiefs or family heads and the government (Mafeje, 2003). The chiefs or family heads allocate land for the benefits of the family and community members. The government administered land using enacted laws to acquire customary land tenure (Babalola and Hull, 2019a). As per the axiology of Afrocentricity, African indigenous people seek land rights from customary land tenure system which is administered through customary institutions.

The government of Nigeria strongly advocates for a hybrid legal system in land administration (Yahaya, 2019; Madumere, 2018). A hybrid legal system incorporates customary and statutory legal frameworks. Both types of legal frameworks are recognised in the constitution with or without equal weight (Efobi and Ekop, 2023; Madumere, 2018). This coexistence of legal systems may cause conflict, tension, and land tenure insecurity (Madumere, 2018). A hybrid legal system contrasts with a parallel legal system in which customary and statutory legal systems are distinct.

The post-colonial LAS reform in Nigeria has failed to address the needs of the people (Atilola, 2010; Mabogunje, 2010). Although the 1999 Constitution of Nigeria recognises both customary and statutory legal systems, it excludes traditional leaders from the composition of the customary court and does not recognise the role of traditional institutions in local governance. The failure of post-colonial reform was exacerbated by the Land Policy of 1978 being entrenched in the 1999 Constitution. The Land Policy has positive effects for revenue generation for the government, which should (but may not) result in improved services on the ground (Thontteh and Omirin, 2015). The government generates revenue from land registration while this may not result in the realisation of land tenure security for the landholder (*ibid*.). The resulting adverse effects on the rural and urban poor communities are significant (Atilola, 2010; Babalola and Hull, 2019a). These include disputes between landlords and tenants, conversion of freehold tenure to leasehold, unrealistic rises in land values, increases in land speculations, hindrances to agricultural development and investment, the problem of consent provisions (requires the governor approval before land transaction can take place), and indiscriminate land grabbing and expropriation (Babalola and Hull, 2019a). Notable friction between customary and statutory legal frameworks exists in land alienation in peri-urban areas. The statutory legal framework imposes the consent of the Governor over the consent of the customary leaders within the customary legal framework (see Ogunola v. Eiyekole, 1990). In addition,

customary law is applied at the court's discretion (see Nwaigwe v. Okere, 2008; Nwauche, 2010), while excessive land acquisition and land grabbing on customary land affects the sustainability of subsistence farming (Famoriyo, 1981; Otubu, 2014; Josiah, 2015; Bridger, 2016). Thus, hybrid legal systems may create tension, conflict, and in some instances, overlaps in LAS. A hybrid legal system may result in uncertainty for land rightsholders, especially women, the vulnerable, and the poor.

Hull (2019) states that a LAS is not meant for registered property alone; off-register land rights are also maintained using (informal) LAS. In rural and peri-urban areas, traditional leaders are actively involved in land administration (Hull *et al*. 2016; Akrofi, 2013; Babalola and Hull, 2019c). Despite this, there is tension between customary and statutory institutions of land administration. The statutory laws in land administration fail to recognise the inherent features of customary land law, tenure, systems, and administration (Pienaar, 2012; Madumere, 2018; Babalola and Hull, 2019a; Babalola *et al*. 2022). The Nigerian constitution is no exception: it fails to recognise customary law as equal to the English received law. Hull (2019) states that our understanding of LASs needs to accommodate the disparities between customary and statutory institutions and laws.

The statutory legal framework for administering land under the Land Use Act (LUA) of 1978 is causing land tenure insecurity for rural and peri-urban Nigerians (Aluko, 2012; Nwapi, 2016; Otubu, 2015; Ghebru and Okumo, 2016; Babalola and Hull, 2019a). The Nigerian government launched a land reform effort to solve this issue, although land reform in Nigeria is at a crossroads due to the problematic logic underpinning its implementation (Mabogunje, 2010; Atilola, 2010; Madumere, 2018). The Nigerian land reform programme for rural areas is designed to "unlock the dead capital" (Atilola, 2010: 9; Mabogunje, 2010). This is in line with the thinking of De Soto (2000), whose writing has been critiqued by many (Cousins *et al*. 2005; Sjaastad and Cousins, 2008; Assies, 2009; Bruce, 2012; van Der Molen, 2012). Much land in rural and peri-urban areas is not subject to land markets and is passed

on from generation to generation or re-allocated to others within the community. It is not in line with customary land law to trade land on the open market.

Alternative motivations for land titling are to address land tenure insecurity (Deininger, Ali, Holden and Zevenbergen, 2008; Olanrele and Agbato, 2014; Thontteh and Omirin, 2015; Oluwadare and Abidoye, 2020), and as part of legal reform and land policy creation and review (Alden Wily, 2012b, 2018b; The Republic of Uganda, 2013; Moyo, 2017). There are some who challenge the link between land issues and land reform. Mafeje (2003) contends that the land problem of sub-Saharan African (SSA) countries (except for Southern Africa) is agrarian, thus motivating for agrarian reform (*ibid*.). Agrarian reform differs from land reform as the former is more encompassing — it includes land reform while also addressing the needs of subsistence farmers. Agrarian reform thus has two main aims – to improve agricultural productivity on land already accessed, while also improving access to land (Mafeje, 2003). Since this study is not related to improved agricultural productivity, agrarian reform is not its focus. Rather, land reform is the focus. Mafeje (2003) highlights that the imposed colonial model of land administration through drafting statute laws and applying European jurisprudence in customary areas relied on a misconception in interpreting African land tenure.

This study contends that agrarian reform within the context of Southwest Nigerian rural and peri-urban land should involve decentralising LAS with full recognition of the customary legal framework. This is even more important given landholders' difficulties accessing statutory institutions. The customary legal framework has the potential to be more flexible and sufficient to meet the needs of landholders.

Agrarian reform that will be *successful* and *sustainable* must be *significant* for land rightsholders in rural and peri-urban areas. Setting appropriate goals and measuring success by achieving them are both necessary for success (Hull and Whittal, 2020). But success shouldn't be gauged just once. Since the creation of cadastral systems is a

continuous process, sustainability (or ongoing success) is crucial (Williamson *et al*. 2010). Therefore, sustainability should be incorporated into actions, interventions meant to improve conditions could be unsuccessful if objectives are not in line with land rights holders' needs (Hull and Whittal, 2020). An agrarian reform programme that fails to address land policy reform is unlikely to succeed. Where there is a disconnect between customary and statutory land law, it may require alignment.

Based on the premise that the LAS in Nigeria is built on a hybrid legal system, there has been no research into whether this contributes to decreased or enhanced land tenure security. The effects of a mixed legal system in LAS are the subject of this in-depth study in Southwest Nigeria using Ekiti State as a case study (see Section 1.5 and chapter 4). Using the lens of legal pluralism, LASs with their legal frameworks is assessed to improve land tenure security in land administration.

1.2 Definition of Terms

It is essential to define the terms adopted in this research to avoid ambiguities. Hull and Whittal (2013) and Hull (2019) identify that researchers and practitioners often adopt terms most relevant to them while readers interpret words through subtext and argument. Lemmen *et al*. (2013: 27) explain that one of the objectives of the Land Administration Domain Model (LADM) is the "establishment of a shared ontology [to enable] communication between involved persons." Communication about land administration is facilitated through internationally recognised vocabulary. Hence, the important terms used in this research are explained below and presented in alphabetical order.

1.2.1 African customary law

Customary law is a normative order that results from consistent social behaviour, the establishment of an accompanying sense of obligation, and population observation (Fisher and Whittal, 2020). A normative order is a collection of connected norms, laws, and other rules (*ibid*.). There is currently a distinction between the customary law upheld by the

people and the customary law acknowledged by the courts as a result of the interaction of customary law and state law (Diala, 2017). When customary law was interpreted using the idea of western legal standards, a new version of customary law was created (*ibid*.). In addition, the reliance on customs and traditions given by individuals interested in power and property contributed to the emergence of a new version of customary law (*ibid*.). Two types of customary law are living customary law and official customary law. Woodman (2014) describes living customary law as a normative order practised within a population or a social group. Living customary law is not associated with a state, it is not applied in the formal courts, and it is not written down in any form. Official customary law refers to normative orders recognised as customary law by the state. These are reproductions or adaptations of living customary law (*ibid.*). Because they are generated through interpreting living customary law, they may not be biased. Since they are written down (a process called codification), they become static and insensitive to changes in the environment and society while living customary law retains its attribute of adaptability.

> *"For custom to be considered customary law, it must pass the test of certainty, reasonableness, uniform observance in the community, and endurance"… "Customary land rights are rights in property bounded and governed by customary law" (Fisher and Whittal, 2020: 803).*

1.2.2 Land conflict/dispute

A **land conflict** is characterised as a social reality involving at least two parties and stemming from disparate interests in the ownership of land, including the rights to use, manage, generate income from, exclude others from, transfer, and receive compensation for, that property. Hence, a land conflict can be an abuse of, restriction on, or dispute about land ownership rights (Wehrmann 2005). Dispute is a sort-term disagreement that are negotiable in which some sort of resolution are reached between disputants while conflict is a long-term disagreement which are non-negotiable (Burton, 1990). A dispute can easily turn to a conflict if unattended to but conflict rarely turn into dispute.

1.2.3 Legal pluralism

Legal pluralism is defined as the coexistence of two or more legal systems within a specific geographic area. (Merry, 1988; Griffiths, 1986; Pimentel, 2011; Ndulo, 2017; Fisher and Whittal, 2020). Woodman (2011: 36) defines legal pluralism as "a class of situations in which a population observes more than one law." Woodman further defines the population as a group observing the same laws. According to this study, legal pluralism is a state or a system in which two or more states, groups, principles, or sources of authority coexist in a way that gives individual bodies more autonomy, self-determination, and devolution than rigid state control (Babalola *et al*. 2022). Legal pluralism is most frequently used to refer to the cohabitation of several LASs, received colonial law, and African customary law in former African colonies (Ndulo, 2017; Fisher and Whittal, 2020) (noting that these hybrids are always changing). African customary law may not always be acknowledged while the received law is widely accepted, and even when it is, it may be dismissed as inferior and antiquated. Enhancing legal pluralism in LAS in this thesis is understood as bringing the weak and deep legal pluralism to a state of balance and harmony (see section 2.3.1 for weak and deep legal pluralism).

1.2.4 Land administration systems

Land administration "is the process of determining, recording and disseminating information about the relationship between the people and land.[1] It may be considered as the operational component of land governance as well as the pursuance of national land policy goals, plans and strategies (Hull, Kingwill and Fokane, 2020). **Land administration systems** (LAS) control the interaction between humans and the land (Fisher and Whittal, 2020). It supports the core functions of land governance which include safeguarding land

[1] http://www.cadastralvocabulary.org/CaLAThe/LandAdministration

tenure, generating revenue from property taxes, regulating and planning future development, preserving and sustainably managing the natural environment, and safeguarding and maintaining cultural artifacts. (Fisher and Whittal, 2020).

1.2.5 Land management

Land management can be regarded as the science and practice surrounding the conceptualisation, design, implementation, and evaluation of socio-spatial interventions, with the aim of enhancing the quality of life and the resilience of livelihoods in a responsible, effective, efficient, consensual, and intelligent manner (de Vries and Chigbu, 2017).

1.2.6 Land reform

Land reform concerns the course of action designed to address the defects in the institutional structure governing the human-land relationship. This includes changing the system of landholding, enhancing land production, and expanding the distribution of benefits through intervening in the current pattern of land ownership, control, and usage (World Bank, 1996). Saeda and Barau (2009: 1) "prescribe a knowledge-based land reform" in Nigeria using a multidisciplinary approach. Land reform in Nigeria addresses eight tools needed to address land problems: conservation, industries, equity, rural development, non-state actors, participation, conflict management, and land documentation (Saeda and Barau, 2009). The focus areas of this research are identified in gold in Table 1-1. The aspects of conservation and industry are not discussed as they are outside of the objectives and hence outside the scope of this research.

Land tenure reform means a planned change to land access and landholding that recognises locally held rights to land and empowers the local people over these rights to land (Alden Wily, 2000). Improvement in land tenure contributes to LAS development. Land documentation and better conflict management can improve land tenure reform.

Table 1-1. New Land Reform in Nigeria (Saeda and Barau 2009: 6).

Aspects of Land Reform
Conservation
Industries
Equity
Rural/peri-urban development
Non-state actors
Participation
Conflict management
Land documentation

1.2.7 Land tenure security

Land tenure security is the perception that the rights to ownership, use, or occupation of a piece or parcel of land by an individual or group will be respected in a manner that is "free from encroachment, eviction, or interferences from both internal and external sources" (Place *et al*. 1994). Land tenure security may further be defined as the "legal and practical ability to defend one's ownership, occupation, use of and access to land from interference by others" (Weinberg, 2015: 6). In SSA, Simbizi *et al*. (2014: 231) define land tenure security as "an emergent property of land tenure system" comprising "five interacting elements: people, social institutions, public institutions, land rights and restrictions, and land and information about the land." (Simbizi *et al*. 2014: 237). Favourable interactions between these elements improve tenure security. Whittal (2014) adopts a systems understanding of

land tenure security. She expands the measures of land tenure security to include three parts: legitimacy, legality, and certainty. These enable tenure security to be expressed for different land right types. These understandings are supported for this study. Simbizi *et al.* (2014) identify the interaction of elements to improve tenure security, while Whittal (2014) identifies factors that measure tenure security for the holders of rights and interests in land.

1.2.8 Organisational field

An **organisational field** is "a community of organisations that partakes of a common meaning, system and whose participants interact more frequently and fatefully with one another than with actors outside the field" (Scott, 1995: 6). A set of organisations with related objectives are often considered to make up an organisational field, which is an institutionalised domain or sector of society. The idea is used in sociological neo-institutionalist analysis to explain the spread of comparable social practices, organisational structures, and policies among organisations that are part of a particular organisational field (Pula, 2016).

1.2.9 Peri-urban areas

Peri-urban areas are transitional areas between urban and rural areas that are urbanising and gradually acquiring many features of urban areas (FAO, 1999; Nkwae, 2006). The competition for land for non-agricultural purposes and the presence of bush/fallow agricultural land are specific features of peri-urban land (Holland, *et al*. 1996). Peri-urban areas are distinguish from urban and rural areas by their diverse population, growth and expansion, heterogeneity of land uses, morphological conditions and densities of built up areas, demographical changes and complex functional relations and social structures (FAO, 1999).

1.2.10 Responsible land management

The notion of **responsible land management** (RLM) emphasises the importance of taking into account socioeconomic, cultural, and environmental variables before designing and implementing a land management system (Ameyaw, *et al*. 2018). Responsible relates to structures, processes and outcomes (de Vries and Chigbu, 2017). RLM constitutes responsive, resilient, robust, reliable, respected, reflexive, retraceable, and recognisable which are referred to as 8Rs indicators.

1.2.11 Traditional and customary courts

A traditional court is an institution or structure constituted to function by a community's norms, values, and customs to resolve disputes. These norms, values, and customs do not meet all the requirements to be considered customary law but are still used to make determinations in traditional courts. A **customary court** is a statutory institution or structure established according to constitutional principles to observe and resolve disputes using customary law (Section 280 of Constitution of Nigeria).

1.3 Aim, Objectives, and Research Questions

The study aims to provide understanding of the influence of hybrid legal systems on LASs by developing conceptual tools to help improve tenure security in peri-urban land administration.

1.3.1 Objectives

1. To critically examine LAS and land law within a mixed legal framework in Ekiti State.
2. To determine the dynamics of legal pluralism using organisational-institutional perspectives in Ekiti State.
3. To determine to what extent land management meets the responsible land management (RLM) objectives in Ekiti State.
4. To determine the weakness and depth of legal pluralism in LASs in Ekiti State.

5. To develop conceptual tools for assessing LASs with their legal frameworks as well as enhancing legal pluralism in peri-urban LASs.

1.3.2 Research questions

The main research question to be answered by the study is:

How does a hybrid legal system affect LASs and tenure security of peri-urban dwellers in Southwest Nigeria?

The following questions will be answered prior to answering the main research question:

1. How is the legal framework for administering land in Ekiti State, Nigeria, constituted; what is the effect on tenure security and how does the existing legal framework support the LAS structure?
2. How are land disputes resolved in regular and customary courts; how customary is the customary court and CCAS; how is customary law applied in customary courts; and how are customary courts managed within a pluralistic environment?
3. To what extent do customary and statutory institutions in peri-urban Ekiti State satisfy the Responsible Land Management (RLM) objectives?
4. What is the version of legal pluralism practised in the case study area, and what are the indicators of these forms of legal pluralism in land administration?
5. What conceptual tools emerged from the analysis of peri-urban land administration?

1.3.3 Sub-research questions

The underlying embedded research questions will first be answered so as to answer the primary research questions.

6. In assessing LASs with their legal framework, what theoretical frameworks and analytical tools are appropriate?

7. In the case of developing a conceptual framework for assessing LASs with their legal framework, what methods have been used, and to what extent in Nigeria, Africa, and elsewhere, particularly concerning peri-urban land access?
8. Is an analytical systems approach to developing a case study narrative appropriate in this research? Has this been done in Nigeria before or elsewhere?
9. Are systems tools appropriate to model the problem situation and develop case study narratives of LASs with their legal frameworks?
10. Has systems tools been used before? How were they done, and what is the effect? Are there any other systems tools that may be suitable?

1.4 Theoretical Framework

Based on the research questions (see section 1.3.2), this research investigates appropriate approaches for knowledge generation. This begins with selecting worldviews, paradigms, theories, and models. The research acknowledges that custom is a source of law, and that the positivistic paradigm of state authority's legal reasoning is insufficient given how it interacts with state norms (see Diala, 2017; Badejogbin, 2022). As such, this study evaluates the legal frameworks of the LASs through the lens of legal pluralism in order to demonstrate the interplay between statutory and customary players in land administration. Chosen methods must be suitable to understand complexity, including economic, political, cultural, and social realities. A post-positivist paradigm using critical realist ontology with a multi-paradigmatic approach is adopted (see section 3.2). Also, to guide the research the study uses Soft Systems Methodology (SSM) and institutional isomorphism theory from the field of organisational studies (see 3.3 and 3.4). The RLM and Fit-For-Purpose Approach are used as the analytical tools for this study (Enemark, 2004; Sahlin-Andersson *et al*., 2012; de Vries and Chigbu, 2017) (see Sections 4.4.3 and 4.4.4).

1.5 Research Design and Methodology

By adopting a case study research design, this study assesses the legal framework of the LAS in Southwest Nigeria using Ekiti State as the case study area. Examining the dynamics between customary and statutory law, tenure, and administration in Ekiti State in light of the contemporary processes of the LASs and legal frameworks, a multi-disciplinary approach is required. By reviewing the literature on LAS and legal pluralism the social, political, economic, cultural, institutional, and historical contexts of LASs are provided. The literature gives various perspectives of LAS and legal pluralism including those of engineering, anthropology, and law. This study's theoretical framework, analytical tools, and methodology are derived from engineering, social sciences, public administration, and law.

This research identified a case study strategy as appropriate for the study. The case study methodology helps study unstructured and complex problems. A case study is also suitable for an in-depth investigation (Yin, 2009). This study used a multiple case study design focussing on three peri-urban areas in Ekiti State, Southwest Nigeria (see Figure 4-1). The research makes use of secondary data in the form of published literature, and primary data in the form of interviews and surveys. The combination of qualitative and quantitative data is analysed using mixed methods as explained in Section 4.3 and the research design is conceptualised in seven stages with the thesis structure (see Figure 1-1).

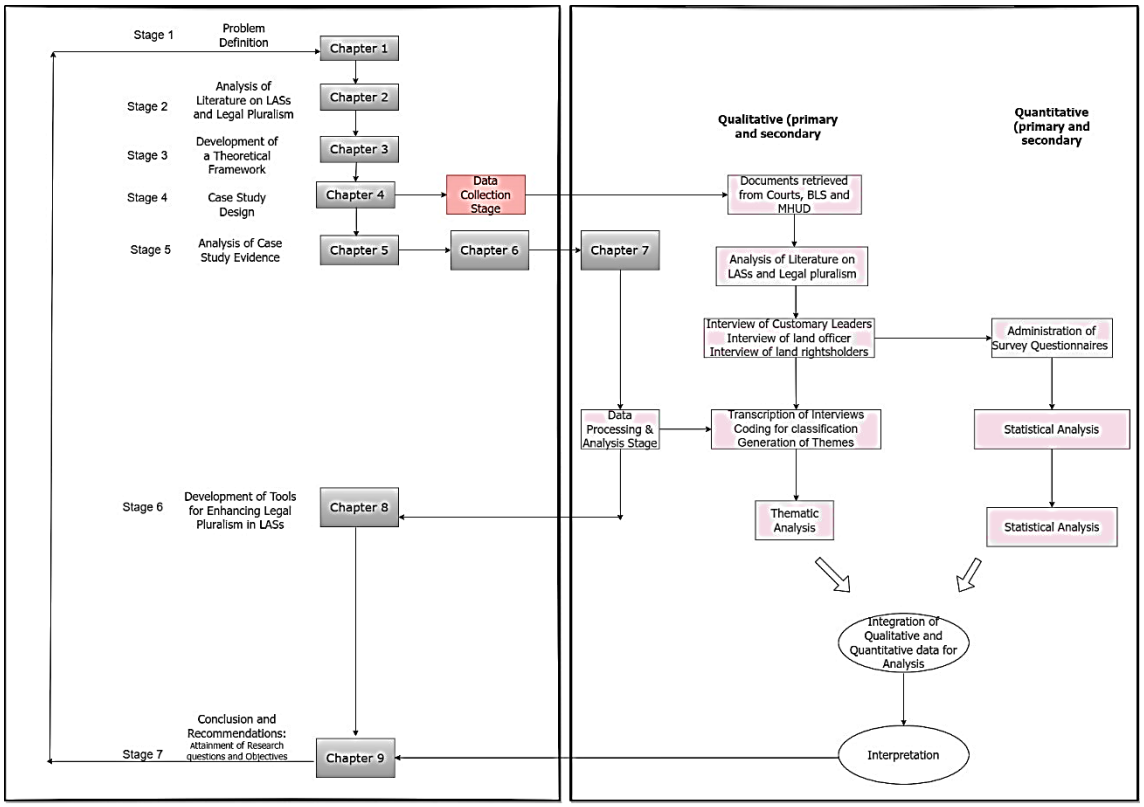

Figure 1-1. Convergent Mixed Methods Research Design in relation to Thesis Structure

The case study methodology is appropriate with a multi-paradigmatic approach using critical realist ontology. This theoretical framework has been used and tested by Whittal (2008), Akrofi (2013), Obeng (2018), and Hull (2019). For reliability and generalisation to theory, multiple cases are preferred. Various sources of evidence are adopted for acquiring data in the cases studied – this strengthens internal validity. Primary data consists of interviews collected from Ekiti State, Southwest Nigeria. Secondary data consists of documents, statutes, magazines and newspapers, regulations, books, conference proceedings, case laws, and journal articles. The details of the methodology, including case selection and case study design, and the analytical framework are presented in Chapter 4.

1.6 Research Bias

Bias is envisaged from the author's personal experiences and observations. The researcher holds a master's degree in Engineering specialising in Geomatics. His research traditions are based on both positivism and interpretivism (see sections 3.2.2.1). Ekiti State, Nigeria,

where the researcher hails from, has a mixture of customary and statutory laws, land tenure, and administration. The researcher worked for two years in the peri-urban Oye local government area, Ekiti State. During this period, the researcher built a strong relationship with traditional and local government authorities in land administration. Previous engagement in Oye-Ekiti affords the researcher access to in-depth data that would be difficult to obtain by someone who is not from the region and has no advantage of established relationships of trust and respect. The interview guiding questions assist in managing personal bias and ensuring that data of similar nature are collected.

A positivist paradigm is the basis of the research training and work experience, but a multifaceted triangulation is used in the collection and analysis of data to address the researcher's bias.

1.7 Research Scope

This research focuses on LASs with their legal framework using customary and statutory law, tenure, and administration.

Aspects not covered in this research are:

- Technical details of peri-urban land administration such as the process of building plan approval, surveying, layout design, and records keeping;
- Detailed comparison between customary and statutory law, tenure, and administration;
- Analysis of the social advantages and disadvantages of weak and deep legal pluralism in land administration.
- Improving the system is not part of the research study. SSM model was used to provide understanding of the system

1.8 Research Ethics

The University of Cape Town research protocol directs this investigation. The interview protocols are read to the respondents before the commencement of the interview section (See Appendix 1 to 3 for interview questions). The interviewer's consent is sought before the research starts, following Creswell's recommendations (2014, quoting Sarantakos, 2005). For example, a consent form is issued in which respondents acknowledge that they accept the research protocol as explained. UCT's code of ethics involving human subjects is adhered to, ensuring anonymity, confidentiality, and using pseudonyms in reporting.

Mouton (2001: 238) states that "acceptable norms and values" should be followed when researching human subjects. This is critical when social relations in rural communities are essential, and respect for traditional leaders is highly regarded (Moyo, 2019). This research involves interaction with customary and statutory institutions in the public domain. Access in areas where customary LAS are dominant is through community leaders who are gatekeepers for entry to the community. Access in areas where statutory LAS are dominant is through meetings with officials. Bureaucracy in statutory institutions might hinder a smooth data collection process. However, the researcher determines land administration experts as the entry point for the MLHPPUD and Ministry of Justice.

1.9 Significance of the Study

The findings of this study will contribute to understanding the processes of customary and statutory legal frameworks in Ekiti State, Nigeria. Policymakers will also benefit from the study's findings as land policy and related laws play a vital role in LAS. The increasing demand for land and land tenure security justifies the need for more effective ways to have land rights and interests *recognised, respected, and recorded*. Land administration institutions and policy makers that apply this study's findings will be able to focus interventions on improving the LAS's pro-poor responsiveness and land policy.

The RLM and Fit-For Purpose Land Administration (FFPLA) guidelines are used in the study as the underlying analytical tool because they adopt pro-poor principles. The institutional isomorphism theory in organisational studies is used to identify organisations under pressure to follow the guidelines and patterns that are commonplace in a particular organisational field.

Using the developed conceptual framework for the design and enhancement of LASs and associated legal frameworks in land reform projects, land policymakers should be able to design a system that will be simultaneously sustainable and significant for the peri-urban populace. The sustainability of LAS is fundamental to improving the livelihood of peri-urban dwellers.

President Yar Adua set up the Presidential Technical Committee on Land Reform (PTCLR) on April 2nd, 2009, to advise the President on land reform. The Committee's mandate is, among others: "Providing technical assistance to state and local governments; 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; and to make any other recommendations which provide practical, simplified, sustainable and successful land administration in Nigeria" (Mabogunje, 2010: 11). This study addresses all of these issues in addition to others. One hopes that in Nigeria and in other similar contexts the findings will help policymakers achieve successful land and legal reform.

1.10 Contribution to Knowledge

The significant contribution to knowledge is the development of conceptual tools for enhancing legal pluralism in LAS in the case study area and to assess LASs with their associated legal frameworks. The developed conceptual tools emphasise the three pillars of human rights, the rule of law, and legal pluralism. The aspect of legal pluralism addresses

jurisdiction, legitimacy, and collaboration. Focusing on application in SSA, these aspects provide for local land management, institutional flexibility, legal flexibility, decentralisation of LASs, self-determination, devolution of powers, and autonomy in LASs. The developed conceptual tools provide understanding on the effects of hybrid legal systems on LAS in peri-urban SSA contexts.

The case study narrative contributes to knowledge in terms of 1) methodology – it is the first study to use SSM, RLM, and FFPLA in assessing LASs and associated legal frameworks in Nigeria, and 2) the development of a deep understanding of legal pluralism in this region. 3) SSM also contributes to additional knowledge on its use to structure the problem situation in Nigeria LAS and provide insights into the implementation of FFPLA in Nigeria.

At the theoretical level, the study contributes to understanding legal pluralism in practice — especially its influence on LASs in peri-urban contexts. In particular, the link (if any) between legal pluralism and land tenure security of peri-urban dwellers in Southwest Nigeria contributes to knowledge.

1.11 Structure of the Thesis

As indicated in Figure 1-1, there are nine chapters in this thesis., from the introduction through the research design chapters to the conclusions and recommendations.

Chapter 1: Problem Definition

The chapter provides background knowledge for the study and states the problem addressed by the study. The research design is conveyed by stating the problem statement, objectives, and research questions; the research activities; case study areas; and theoretical framework.

Chapter 2: Review of Related Previous Research in LASs and Legal Pluralism

Previous research in LAS and legal pluralism is reviewed in this chapter. The chapter reflects on the need for a constitution along with constitutionalism; the resilience of

customary law, land tenure, and administration; land policy reform in SSA, land tenure reform in SSA; individualisation of land and economic development; land title registration in customary land tenure systems; and land registration and agricultural productivity. The chapter further examines the nature of legal pluralism by discussing deep legal pluralism and weak legal pluralism. The importance and concept of RLM are presented. The chapter also reviews human rights and the rule of law. The theoretical, methodological, and analytical frameworks are examined to identify the suitability of LASs with their legal frameworks.

Chapter 3: Theoretical Framework

The chapter presents the theoretical framework driving the research study with the world views and justification of the appropriateness of critical realism. A systems theory approach to SSM is presented. Institutional isomorphism theory is argued to be suitable for studying customary and statutory law, land tenure, and administration. These theoretical frameworks are multi-disciplinary, cutting across social sciences and engineering. The chapter further examines the pillars of institutions as crucial to assessing customary and statutory institutions in the land administration process. The theory of law and the legal system are suitable for the legal framework.

Chapter 4: Research Design and Methodology

The research design, methodology, and techniques used in data acquisition are discussed. Chapter 4 further explains the modes of analysis and presentation used in the study. Multiple case studies of peri-urban areas are used in conjunction with multiple methods of convergent design. These are argued to be suitable to address the research objectives. The suitability of SSM, RLM, and FFPLA are all motivated.

Chapter 5: Case Study Narratives of the LASs with their Legal Frameworks in Ekiti State, Nigeria

A case study narrative is developed for the study. The chapter discusses the LASs with their legal frameworks for administering land in Nigeria by consulting sources of law and classification of law. It further discusses the land tenure system in Nigeria with the intent to examine customary and statutory land tenure. The government's extent of control of local land management with statutory laws is discussed. The statutory institutions of land management and their functions are analysed. This is to help identify the extent to which the current LASs with their legal frameworks support day-to-day land management in the peri-urban areas.

Chapter 6: Legal Pluralism: An Institutional Theory Viewpoint on Courts of Law – Customary Land Law in Peri-urban Ekiti State

The lens used in this study is that of legal pluralism. Hence this chapter is imperative for analysing how customary land laws are observed in customary and statutory courts. The chapter explores the conflicting pressures experienced by customary courts and Customary Court of Appeal of a State (CCAS). It discusses the critical issues of customary land law in courts of law. Furthermore, the chapter examines legal pluralism in Ekiti State using Institutional Isomorphism Theory. The chapter elaborates on the factors responsible for the differences in customary law practised in the peri-urban areas and the ones observed in the courts.

Chapter 7: Case Study Narratives

The SSM and the RLM are used as a guide to present the detailed case study narrative in this chapter. Due to the use of naturalistic generalization in this study, the interpretation of the data is constrained in this chapter.

Chapter 8: Analysis of Peri-Urban Land Administration

The results of the findings into how customary and statutory land management institutions meet the requirements of the objectives of RLM's are presented. The indicators used in the assessment (see chapters 2 and 4), entail the 8R indicators against which the institutions are tested. These indicate whether the institutions are resilient, robust, reliable, respected, reflexive, retraceable, recognisable, and responsive. The assessment is based on customary and statutory land tenure institutions in the three peri-urban areas: Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti. General characteristics of weak and deep legal pluralism in LAS are analysed. Furthermore, analysis of LAS using FFPLA to determine the extent to which LAS is pro-poor is determined. The chapter further develops conceptual tools for enhancing legal pluralism in LAS.

Chapter 9: Conclusion and Recommendations

The findings and conclusions from this study, in line with its five objectives, are presented. The chapter further presents the study's contribution to knowledge and recommendations for future research.

2 Review of Related Previous Research in LASs and Legal Pluralism

2.1 Introduction

The various points of view held by academics studying LASs and legal pluralism are examined in this chapter. An overview of the issues relating to LASs and legal pluralism is explained, showing customary and statutory LASs, as well as legal pluralism. The strengthening of indigenous laws in land administration has become the agenda of many researchers. Research on LASs and legal pluralism has encouraged debate in the area of land administration concerning hybrid legal systems and statutory and customary LASs (Unruh, 2003; Akrofi, 2013; Obeng, 2018; Mushinge & Mulenga, 2016). The supporters of statutory land administration, Kieyah and Kameri-Mbote (2010), claim that it facilitates land transactions, provides tenure security, and provides an incentive for investment (De Soto, 2000; Zakout, Wehrmann and Törhönen, 2006; Peters, 2009). They claim this results in economic development (De Soto, 2000). They view statutory land administration as efficient in its use of statute laws to the detriment of customary laws that govern local people (Bugri, 2008; Peters, 2009; Agboola, Scofield & Amidu, 2017). Also, the elite tend to benefit from statutory land administration using statute laws (Nuhu, 2009; Abdulai and Owusu-Ansah, 2014) since they are best able to capitalise on the resulting formalised land market systems (*ibid.*). Overall, the argument is that statutory land administration is viable, efficient, and effective using statute laws, and that in all countries, registering land titles is crucial for economic development and land development (Kieyah and Kameri-Mbote, 2010; Awuah & Hammond, 2013; Olanrele & Agbato, 2014).

The efficiency and effectiveness of the statutory LAS are being questioned on several fronts. Arko-Adjei (2011) and Akinbola & Md Yassin (2016) contend that excessive red tape and other barriers associated with dysfunctional administrations have kept the statutory LAS from responding to the needs of the local population. Arko-Adjei (2011) discovered that customary LAS are adaptable to indigenous institutions in Ghana. Akrofi (2013) argues that

customary land administration is accessible to local people and agrees that local conditions determine the functionality of LASs. In Nigeria, the efficiency and effectiveness of LASs are premised on the degree of mutuality, 'frictionlessness', and bi-directionality in the interrelationship among the tasks that land registry offices are saddled with (Akinbola & Md Yassin, 2016).

Asante (1997) argues that a customary LAS is sufficient to provide the outcomes that the community wants to see. Hence, state ownership of land should be discouraged. According to Antwi (2002), because customary land administration practices adhere to the economic rules of supply and demand, they should not prevent economic progress..

This chapter's narrative is guided by Mafeje's (2000) Afrocentric approach. An Afrocentric paradigm implies an appreciation of the potential of self-reliance in thinking and practice as the greatest approach to get rid of the remnants of imperialism among Africans (Mafeje, 2000). According to Mafeje (1988), if Africans continue to adopt European ways of thinking, Africa's authentic voice will not exist in the global political context. For Funani (2019), regaining an authentic voice requires rejecting all forms of control and past representation. Mafeje (2000: 69) asserts that this "must entail a rebellion, a conscious rejection of past transgression, and a determined negation of negations". For Mafeje, an Afrocentric perspective facilitates Africans regaining their voice and pursuing their context-specific development agenda. He further states that Afrocentrism can be termed a "methodological requirement for decolonising knowledge" in Africa (*ibid*). He finally asserts the need for "African scholars to study their society from inside and cease to be purveyors of alienated intellectual discourse" (Mafeje, 2000). Funani (2019) argues that the Afrocentric paradigm challenges the imperial and colonial (Eurocentric) history of the continent.

Mafeje (2000: 108) states that no one can think or act in a way that is unconstrained by historically established circumstances and still claim to be any kind of social form. In other words, even while we have the freedom to decide on our roles and see ourselves as active

participants in history, we do not put the social concerns to which we respond on the agenda. The past has forced these onto Africans. For instance, Africans of formerly colonised countries would not discuss freedom if there were not any pre-existing restrictions that prevented it. Africans would not be fighting racism if they had not been its victims; Africans would not be insisting on Afro-centrism if it were not for Eurocentric negations; and Africans would not be claiming to be African if their identity had not been downplayed or denied in the past.

Asante (2007) made a distinction between 'Afrocentricity' and 'Afrocentrism'. Afrocentricity is defined as "a consciousness, quality of thought, mode of analysis, and an actionable perspective where Africans seek, from an agency, to assert subject place within the context of African history" (*Ibid.* 16). Afrocentrism is a fight against subjugation. Afrocentrism is therefore fundamentally a cultural battle, an ideological conflict, because subjection and subjectivity are negotiated primarily within the field of culture whose goal is the "decolonization" of the mind or an "escape to sanity" (Asante, 1991: 125). Afrocentricity views the privilege of "African agency within the context of African history and culture" (Asante, 2007: 2). Asante (1998), quoted in Asante (2007), argues that quality of location is paramount in analysing African culture and behaviours. He further states that Afrocentricity appears outside the mainstream, hinting at its theoretical ties to authors and ideas from Africa (Asante, 2007). Furthermore, "Afrocentricity, if anything, is a shout-out for rationality amid confusion, the order in the presence of chaos, and respect for cultures in a world that tramples on both rights and the definitions of the rights of humans" (Asante, 2007: 7).

Asante's focus on Afrocentricity strengthens the political and cultural mind of Africa's large communities through its influence on attitude, language, and directions. His work on collective agency and open discourse in favour of multiculturalism is imperative for preserving African culture and society, as each is complementary to western civilisation

rather than subordinate to its doctrine. Afrocentrism and Afrocentricity converge in meaning as scholars use the concepts to assert that African modes of thought must be based on theories rooted in local thinking.

The argument in this chapter follows the Afrocentricity approach. This implies using African modes of thought and study from within Africa in analysing literature. The view is that despite every effort to erode customary laws, tenure, and land administration, they have proved resilient since pre-colonial times (Alden Wily, 2012a).

Section 2.2 review LAS research while section 2.3 explains the nature of legal pluralism. In section 2.4 the importance and concept of RLM was discussed. Human rights and the rule of was explained in section 2.5 while in section 2.6, previous research which used theoretical framework related to this research is examined. Research which used case study and system thinking methodology is reviewed in section 2.7. In section 2.8, analytical frameworks for customary and statutory LAS is presented. Finally, the summary to the chapter is presented in section 2.9.

2.2 Review of Research in Land Administration Systems

This section presents the review of related research on LASs. Section 2.2.1 explains constitutions and constitutionalism given two considerations of the constitution as 'thin' and 'thick'. This section provides an overview of what constitution and constitutionalism mean in post-colonial SSA within the context of land administration, emphasising Nigeria. The resilience of customary land administration is presented in section 2.2.2. Land policy and land tenure reform are described in sections 2.2.3 and 2.2.4. Section 2.2.5 presents the correlation between individualisation of land and economic development. Land title registration in customary land tenure system is presented in section 2.2.6. Land registration and agricultural productivity are discussed in section 2.2.7.

2.2.1 Constitution and constitutionalism

2.2.1.1 Constitution

Constitutions are "primarily about political authority and the location of power, conferment, distribution, exercise, and limitation of authority and power among the agents of the state" (De Smith and Rodney, 1998: 6-7). A constitution is a function of four components: matters of procedures, substance, a guarantee of rights, and freedom of citizens (Olasunkanmi, 2018). The principles by which states are guided are embedded in the constitutions (Fisher and Whittal, 2020). A constitution imposes limits on the powers of the institutions of government in relating to citizens (Olasunkanmi, 2018).

Raz (1998) provides two considerations of constitutions, which are distinguished as 'thin' and 'thick'. 'Thin' implies the rule that creates and controls the critical structures of government, their constitution, and powers (*ibid.*). He refers to this form of the constitution as 'tautological' as every legal system will show rules of this kind. Thin constitutions are "confined to relatively abstract statements of principle" (Craig, 2001: 127). In addition, a thin sense of the constitution is captured where there is some measure of devolution of powers by specifying the management of the federal and state or regional governments (Craig, 2001).

Seven features of the thick sense of constitutions are (Raz, 1998):

1. The constitution will contain substantive and procedural norms making it *constitutive*, i.e., defining the principal organs of the government and their powers (Raz, 1998).
2. The *stability* of the constitution is considered essential. It can be amended, but it is required to serve as a *stable* framework for political and legal institutions in a country.
3. A *canonical* foundation is required by enshrining it in a written document.

4. Constitutions are *superior laws* indicating that any other law of that nation that conflicts with the constitution is invalid.

5. Constitutions are *justiciable* so that any laws can be assessed in terms of the constitution, and any found incompatible with the constitution are deemed unconstitutional.

6. Constitutions are entrenched, meaning there are special procedures for an amendment that differ from country to country.

7. The constitution displays a shared ideology, which contains provisions addressing democracy, federalism, citizens' rights, and how a society should be governed (*ibid.*).

2.2.1.2 Constitutionalism

Constitutionalism is political thought and action that guards against tyranny and assures citizens of the non-violation of their rights; it is the basis on which free society depends (Reynolds, 1993; Diala, 2017). Relating constitution and constitutionalism brings to the forefront constitution with or without constitutionalism. Olasunkanmi (2018: 272) observed that under the standard of constitutionalism, the government must "be bound by rules". Constitutions in the Global North reflect the customary norms of the citizens. Global North in this context means the more developed societies (Royal Geographical Society, ND).[2] Customary laws are integrated with statute law over time (Diala & Kangwa, 2019). In the Global South, particularly in SSA, constitutions have largely failed to fully recognise customary law (Allot & Woodman, 1985), with few exceptions, such as in South Africa (Diala & Kangwa, 2019). The reflection of customary law in constitutions in the Global North and the failure of not recognising customary law in the constitutions in Global South can be

[2] The study adopts the Royal Geographical Society Global North and South divide using of the Brandt line Royal Geographical Society.

related to the constitutions with constitutionalism in the Global North and without constitutionalism in the Global South.

Diala & Kangwa (2019) rethink the interface between customary law and African constitutions. They state that constitutions should assist citizens in coping with drastic changes in social life, especially the difference between modernity and customs with agrarian origins (*ibid*.). This can be achieved by affirming within constitutions citizens' rights to culture and traditional institutions and ensuring these citizens are not discriminated against. Within the constitutions of South Africa, Kenya, Uganda, Mozambique, and Zimbabwe, there are provisions enshrining the right to culture and communal ownership of land (Alden Wily, 2018d; Diala and Kangwa, 2019). On the contrary, there is only minor recognition of customary law in the constitutions of Tanzania, Nigeria, Rwanda, and Gabon (Diala and Kangwa, 2019).

Alden Wily (2018c) considers the importance of reflecting on constitutions. She states that "constitutional treatment of property rights is a barometer of the intended nature of the agrarian state, so rooted as it is in land and resource dependence" (*ibid.*: 84). A critical issue in addressing constitutionalism in Africa is compulsory acquisition. In Nigeria, the Governor of each state is empowered to acquire land in the overriding public interest.[3] The Land Use Act of 1978 (LUA) fails to define the public interest. Expressing public interest is essential as the loss of rights due to compulsory acquisition goes beyond simply land market value; it also includes cultural, religious, and social loss (Nkosi, 2012). Hence, there is a need to balance the public need and land tenure security provision (FAO, 2009). The contention that compulsory acquisition is "balancing the needs of the few with the needs of the many" is the

[3] Section 28 (1) of LUA, 1978.

legal and jurisprudential explanation for compulsory acquisition (Marcus, 2010: 24; Otubu, 2012).

Using an African perspective, Radin explores personhood in respect of controlling property. According to Kantian personhood theory, a person is an undifferentiated, free, and rational being who exists (Radin, 1982). Whenever property control is violated, a deep understanding of the aspect of violated personhood is shown (Fisher and Whittal, 2000). For instance, the aspect of personal and social violation that occurs when personhood is violated can be seen in the land injustices due to the implementation of a contradictory land policy in Nigeria (Babalola and Hull, 2019a). Many people face land tenure insecurity in rural and peri-urban areas (*ibid.*). Examining the link between land tenure security and personhood is the same as looking at the individual and societal level of personhood. Land restitution, land redistribution and restorative justice are also linked to restorative personhood (Fisher and Whittal, 2020). Personhood of a community allows customary law of property rights and non-alienation of customary land. The current thinking of compulsory acquisition without compensation on land tends to align with the current thinking on the personhood perspective of property. The condition to pay compensation only on improvement on land "accords with property that has minimal or no value to the personhood of the owner" (Fisher and Whittal, 2020: 326).

Constitutionalism is the alignment of laws and associated actions with the constitution – a constitution with constitutionalism limits the powers of governments in law. In a state with a constitution but without constitutionalism the laws and actions of the state are not bounded by the constitution. The citizens may then lose faith in the government. If customary law is recognised in a constitution, then other laws and actions give force to this point to constitutionalism in respect of customary law. Where the laws and actions do not give force to the provisions of the constitution regarding customary law, then constitutionalism does not exist in relation to customary law. Diala and Kangwa (2019)

assess how customary laws are recognised in the constitutions of Nigeria, South Africa, Kenya, Cameroon, Uganda, Mozambique, Zimbabwe, Zambia, Gabon, Ghana, Tanzania, and Rwanda. The provisions relating to the right to indigenous culture and communal life are most acknowledged in the constitutions of Uganda, Kenya, South Africa, Zimbabwe, and Mozambique (*ibid*).

A participatory approach is lacking in the development of some constitutions. For instance, the conception of Nigeria's 1999 Constitution is entirely based on the 1979 Constitution, which had its roots in a military regime and lacked citizen input (Diala, 2013). Diala concludes that the Nigerian Constitution is a constitution without constitutionalism (Diala, 2013; 2017; see also Ihonvbere, 2000). It is not viewed as the 'highest law in the land'.

2.2.2 Customary land administration systems

This section discusses the notion of resilience and the existence of customary land administration and tenure systems both in the colonial and post-colonial periods in anglophone SSA. In the colonial era, there appears to be broad consensus on the resilience of customary land administration and tenure systems despite the enactment of land administration legislation since the former colonial administrations. It is contended this legislation was enacted to advance colonial agendas in Africa (Okpala, 2009). Furthermore, Migot-Adholla *et al*. (1991) argue that, when codifying customary law, the colonial administrations intentionally misrepresented customary land administration and tenure systems.

In many cases, the colonial administrations adopted indirect rule by co-opting the traditional institutions into their governance structure (Afigbo, 1972; Ubink & Amanor, 2008). The adoption of indirect rule enabled them to control African societies in rural areas, including how land was administered (Ntsebeza, 2005). Mamdani (1996: 16) argues that the problem confronting the colonial administrations was how to stabilise "alien rule" and how to deal with the "native question". Supporting this position is Ribot (2001), who asserts

that the use of indirect rule, in which African customary land administration was retained, was to manage African land. Also, Ismail (1999: 7) stated that indirect rule was "an eloquent testimony" to how colonialists recognised the strength of "indigenous rulers". The views above show that the colonial powers recognised customary land administration and co-opted customary leaders as part of extending their control over customary land and peoples. In South Africa, where customary leaders refused to co-operate, others (usually neighbouring leaders) were then appointed over the offending customary leader's domain with many negative and long-term consequences. Also, Ntsebeza (2005) emphasises that traditional institutions derived power and legitimacy from land allocation and not their fame among their subjects. He said that the resilience of traditional institutions continues after independence (*ibid.*).

The notion of the resilience of customary land tenure In colonial and post-colonial contexts can be identified under the reforms of colonial and post-colonial governments. Some argue that the continuous existence of customary land tenure and its systems of administration result from the continued relevance of customary law and customary norms to existing land use and rights and the adoption of indirect rule by the colonial administration. Ntsebeza (2005) argues that the agenda of indirect rule was to preserve the pre-colonial structures and control Africans in rural areas. Kuma (2017) supports this notion: In their capacity as administrators, colonial authorities were aware that controlling the land also entailed managing the local economy (resources both social and economic), which weakened the indigenous population's economic power and increased reliance on them. In this way, the colonial authorities took use of the chance and power they had to take over more land and, in certain circumstances, expropriate the indigenous rights. These acquisitions served a variety of goals, including advancing their commercial ventures in industries, mining, farming, and ranching.

In the true sense, customary law (official) was used to identify individuals or groups (distinguished by race, class, and gender) and deal with land access and control. Here, customary law became "an ideological screen of continuity, a language of legitimisation" (Channock 1985: 4). Analysing the roles of chiefs as the agents of indirect rule, Mamdani (2001) states that the authority of the chiefs was rooted in the combination of judicial, legislative, executive, and administrative powers rather than the separation of powers.

Many customary and statutory land administration and tenure systems theorists support customary land administration and tenure systems (Arko-Adjei, 2011; Alden Wily, 2012a; Akrofi, 2013; Obeng, 2018; Hull, 2019), while many undermine the same (Acquaye, 1984; De Soto, 2000; Pottier, 2005; Peters, 2009; Halle, 2012; Kieyah and Kameri-Mbote 2010). The different perceptions of these theorists result in conflicting rationalities (Acquaye, 1984; Watson, 2003; Halle, 2012). Pottier (2005: 72) argues that despite various codifications of customary land tenure, "customary land tenure still is alive and well, and changing." Similarly, Alden Wily (2012a) asserts that despite endless encroachment and suppression of land rights, customary land tenure remains resilient and active because of the significance of traditional norms to existing land use and rights patterns and how they are connected to social relations.

According to Arko-Adjei (2011), there are mechanisms in place for customary land administration and tenure systems to adjust to societal change. By creating a framework, he proved the need for an alternate method of statutory land administration.. Akrofi developed a framework to evaluate functionality in customary systems by assessing customary land administrations in peri-urban areas in Ghana. He asserts that customary land administration and tenure systems are prevalent in Ghana, whether the inheritance system is patrilineal or matrilineal (Akrofi, 2013). However, Obeng (2018) argues for integrating LASs in customary peri-urban areas. He found that hybrid LASs are suitable for improving livelihood sustainability and tenure security of the local people.

The resilience of the customary LASs and tenure has geared researchers and NGOs to develop pro-poor land administration tools to help sustain land administration in customary areas. Prominent among these tools is the FFPLA, which comprises three interlinked frameworks: spatial, institutional, and legal. Each of these frameworks has four key areas with related indicators. FFPLA has been applied in Ghana, Ethiopia, Tanzania, Nigeria, Uganda, Kenya, Rwanda, and Mozambique (Madumere, 2018; Musinguzi, Enemark, & Mwesigye, 2021; Chipofya, Jan and Schwering, 2021; Balas and Lemmen, 2021; Chigbu *et al*., 2021). It is found to be a suitable pro-poor land administration tool that can be developed for country context-specific LASs (*ibid*.). Using FFPLA principles, Madumere (2018) examined the prospect of statutory recognition of customary tenure system in eastern Nigeria. For instance, Mozambique developed a model of FFPLA based on three interlinked pillars of People, Processes, and Technology (Balas and Lemmen, 2021). FFPLA is yet to be used to assess the LASs and legal framework in Nigeria.

Social inclusion and local economic development were the central purposes of securing land and property rights in Ghana and Kenya – these were achieved using FFPLA (Chigbu *et al*., 2021). Customary land tenure documentation was developed using FFPLA guidelines (*ibid*.). For pro-poor land intervention in SSA, FFPLA improves tenure security which helps to achieve SDGs 1, 2, 5, 11, and 15 (United Nations, 2016; Chigbu *et al*. 2021).

Ho *et al*. (2021) highlight the need for institutional legitimacy, local capacity, and autonomy using a decentralisation strategy for implementing FFPLA through three case studies in India. The model of FFPLA used in India demonstrates decentralisation across multiple levels with a reduced role of state actors (*ibid.*). They state that for decentralisation to be implemented to "fit-for-people", there is a need for political will (Ho *et al*., 2021: 14).

Similarly, some contend that customary land tenure and its administration systems have survived despite the colonial and post-colonial attempts to *relegate* it. Alden Wily (2012a: 4) argues that customary rights were suppressed using policies and laws that demoted them

below statutory ownership. She states that despite the intended conversion of customary land tenure and family land into statutory tenure, only 10% of Africa's lands are under statutory tenure (Alden Wily, 2017). Despite the relegation of customary land tenure of colonial and post-colonial governments, customary land tenure endures.

Others argue that customary land tenure continues to exist to the present because it is the primary source of land access and is very flexible in meeting the needs of the rural dwellers. Alden Wily (2012a) argues that customary land tenure is a central global system for landholding because customary land, for which customary norms govern rights and access, extends to 1,4 billion hectares. Statutory titled land accounts for less than 1% of the land in SSA (*ibid.*). Less than 3% of the land in Nigeria is registered, while in Kenya, one-quarter to a third of the land area is subject to a formal title (Atilola, 2010; Alden Wily, 2012a). With the introduction of independence in the 1960s to most SSA countries and the inadequacy of statutory tenure to meet the critical needs of the people, customary land tenure systems could not be relegated or eliminated.

A more challenging question linked to the preceding discussions is how successful the land tenure and land policy reforms have been since independence from colonial rule and how customary land tenure survives in the African continent and elsewhere. It is believed that with the introduction of statutory tenure by the colonial administrations and the subsequent introduction of land alienation, customary tenure would fade away (East African Royal Commission, 1953–1955).[4] At the inception of independence, most countries did not enact new land laws to alter colonial land laws. Those that passed new laws limited the recognition given to customary tenure (Alden Wily, 2012b). For instance, the Central African Republic, Gambia, Sierra Leone, and Madagascar did not enact new laws until the

[4] "As first laid out by the East African Royal Commission, 1953–1955 (Cmd. 9475) and later reflected in the Report of the Commission on Land Tenure in Francophone Africa (1959)." Alden Wily, 2012a: 12).

1990s (*ibid.*). Nigeria and Kenya enacted new land laws. In Nigeria the *Land Tenure Law No. 25 of 1962* is an example that applies in Northern Nigeria. This law introduced customary and statutory occupancy rights, with the Minister administering land for the common use and benefit of the indigenes (Fabiyi, 1984; Chubado, 2014; see also Babalola and Hull, 2019a). The later constitutional government transferred indigenous land to the County Council to hold land in trust for the occupants and gave power of disposition to the County Council (Alden Wily, 2012b). At independence, customary land tenure was still the primary source of land access, and it became a driving force that could not be subjugated (*ibid*.).

In this section, it is discussed that customary land tenure survives despite the indirect rule in colonial and post-colonial Africa that sought to erode and marginalise it. Indirect rule was used to preserve pre-colonial structures in rural areas as well as to control indigenous peoples living in rural areas. Customary land tenure and administration was found to be resilient in colonial and post-colonial times because chiefs were rooted in judicial, legislative, executive, and administrative powers. There are two school of thoughts, one that supports customary land administration and the other that supports statutory land administration. The differences in perception result in conflicting rationalities. The enactment of land policy in SSA is still a reflection of the colonial land policy which is still geared towards relegating customary land administration and tenure.

Researchers created pro-poor land administration tools as a result of the adaptability of customary land tenure and administration. In rural and peri-urban settings, these pro-poor land administration techniques promote social inclusion and local economic growth. Furthermore, the importance of institutional legitimacy, local capacity, and autonomy was emphasised.

Customary land tenure and administration is resilient till date, and it is shown to adapt to societal changes. There is gap in literature to show the influence of a hybrid legal system on LASs despite the resilience of customary land administration. This study addresses this gap.

2.2.3 Land policy reform in SSA

In the 1980s, policy reform initiated by the World Bank had a "conventional approach to land rights" (Kapur, 2011: 7) as evidenced in their approaches to land titling and registration. This approach was premised on the assumption that greater tenure security would be achieved through the abolition of customary tenure (Kalabamu, 2000; IFAD, 2011). After a decade, the World Bank adopted a different approach, accepting that customary tenure did not impede agricultural productivity (Deininger, 2003; Manji, 2003). However, they maintain that land titling and registration are necessary (*ibid.*). The World Bank recognises the importance of defining land rights as a key to reducing poverty, promoting good governance, and improving economic growth (Deininger, 2003). UN-According to UN-Habitat (2008), the World Bank's land policy reform's primary goals are to promote tenure security and a successful land market. Chauveau (2005) and Antwi-Boasiako (2017) argue that the World Bank land reform programme was unsuccessful in most SSA countries where such programmes were implemented. Over the last decades, theoretical debates in land administration and tenure systems have been premised on policy reform. SSA policy reform experience is geared toward reducing poverty, improving tenure security, reducing unemployment, and economic development (Benjaminsen *et al.,* 2009; the Republic of Uganda, 2013; Moyo, 2017; Alden Wily, 2018b).

Obeng-Odoom (2012) attempted to answer the question about the *outcome* of land tenure and land policy reforms in Africa. He argues that there is a wide gap between theories and practice. He describes two schools of thought: "the ones who argue that land policies should be rooted in a theory of social capital, especially the African traditional land tenure system, and those who argue that individualised tenurial systems are more effective and desirable" (*ibid.*: 161). He describes six important lessons relating to collective and individual land tenure (*ibid.*: 167-168):

- "Insecurity of tenure has different meanings depending on the context,

- the notion of a communal system of ownership is undemocratic,
- using partly democratic government to control land administration is not necessarily efficient,
- individual land ownership overstates its perceived advantages,
- combining personal and communal systems leads to the demise of others, and
- reforms benefit only people in authority and private capital, including some traditional power groups, white settler groups, and state officials."

Recent developments have seen countries such as Tanzania, Kenya, and Uganda enact land policies that fully recognise land administration under customary law (Republic of Uganda, 2013; Moyo, 2017; Alden Wily, 2018b). Several LASs are still based on "a relatively narrow land administration paradigm" (Bogaerts, Williamson and Fendel, 2002: 38), "rigid land registration, cadastral surveying, and mapping rules and standards" (Arko Adjei, 2011: 2, Barry and Roux, 2019). The failure of various land tenure reform initiatives in Africa is linked to a disregard for the legal situation and economic endeavours of the underprivileged (Mowoe, 2019). There is a need to strengthen the customary institution by recognising customary laws applicable to land administration (Elias, 1956; Arko Adjei, 2011; Akrofi, 2013; Alden Wily, 2011; 2018b; Obeng, 2018). Others advocate adapting statutory laws to customary law, while the proponents of statute law advocate for legal pluralism in land administration (McAuslan, 2005). Central to debates on LAS and land policy reform is the recognition of the customary legal framework using customary law to respect, recognise, and record land rights of the rural and urban poor communities.

2.2.4 Land tenure reform in SSA

Many countries in SSA still encounter land ownership inequalities and discriminatory land-use policies, inequality, and landlessness, despite these countries' efforts to address issues of land reform (Byamugisha, 2014). Byamugisha (*Ibid.*) considers whether it is justified to continue to undertake land reform considering the lengthy redistributive land reform

history and inconsistent track record of effectiveness. According to Byamugisha (*ibid.*: 3-4), the following factors support the contention that greater efficiency and equity could result from redistributive land reform: "(1) the negative relationship between farm size and productivity can be exploited by land reform, (2) ownership of land that can enable credit acts as a substitute for insurance to smooth consumption seasonally and over longer cycles for poor people, and (3) the same credit-accessing landownership enables financing of lumpy, indivisible, or long gestation investments for the poor people."

Some see secured land rights (e.g., Adams, Sibanda, Turner, 1999) to be critical for improving the livelihoods of peri-urban dwellers. Since secured land rights are considered crucial for the rural and peri-urban poor, land policies that provide secured land rights may be fundamentally important "for economic activity, poverty reduction, sustainable management, and the well-being of households" (Ubink, 2008: 15). Many countries in SSA embark on land reform of one kind or another, geared towards ensuring the security of property rights (Alden Wily, 2003; 2011). Different methods and approaches have been adopted despite a converging aim. The first ideology of reform was that customary law inhibits agricultural productivity because of its non-compliance with modern agricultural practices that were "capitalising and adopting new technologies and would increase through the creation of individual property rights" (Ubink, 2008: 15). It was intended to use private property to address tenure insecurity, which was viewed as an issue under customary law. It is thought that greater security will motivate farmers to make improvements to their land, increasing productivity (World Bank, 2003a). Adopting this policy direction without a careful experiential investigation of the fundamental connection between individual rights in land and improved tenure security and agricultural outputs in SSA may result in negative consequences for the poor (Bruce and Migot-Adholla, 1994; DeSchutter, 2011; Abdulai, 2013; Hull and Whittal, 2017). The situation led policymakers to

realise that land policy must start with what exists already, including an appreciation of customary tenure as a system of land access and employment creation (Ubink, 2008).

Studies conducted, e.g., in Nigeria, Kenya, Ghana, Uganda, South Africa, and Ethiopia, reveal that despite the efforts of post-colonial governments to marginalise and even abolish customary land tenure systems, they remain resilient. Statutory tenure is the ultimate endpoint in some SSA countries' land policies. The trend on land tenure and land policy reform is centred on *individualisation* and *communalisation* of land (Deininger, 2003). This situation has led observers such as Alden Wily (2012a: 4) to assert that "despite endless encroachments and suppression of rights, the customary sector remains strong and active." At the same time, the continuous existence of customary land tenure systems has raised the question of their role in providing secured land rights for the rural, peri-urban, and urban dwellers in the post-colonial context. These issues are examined below.

Discussing land tenure and land policy reform outcomes, the approaches used by Obeng-Odoom (2012), Hull *et al*. (2019), and Alden Wily (2012c; 2017) are helpful. Obeng-Odoom (2012) presented an accountable, gender-aware, democratic land tenure system while Hull *et al*. (2019) present a continuum of land theories with conservative theory on one extreme and replacement theory on the other extreme of the continuum. In between these two extremes is adaptation theory. The replacement theory tries to substitute formally registered property rights for customary practices, while the conservative approach seeks to retain live customary law and tenure. The third offers a context-specific, balanced approach to land reform. Finally, they claim that imposing an inappropriate theory could lead to a failed land reform effort. The views expressed by both Obeng-Odoom (2012) and Hull *et al.* (2019) advocate for adaptation theories for land tenure and land policy reform if such programmes are to be successful. The notion of 'complementarity' helps recognise existing systems and accommodates the new system rather than superimposing one on the other, as per replacement theory. For example, cases were examined in Nigeria,

Mozambique, and South Africa to assess which land reform theories were informing land reform. Replacement theories were observed in all three instances, with only Mozambique moving close to the middle of the theory continuum (Hull *et al.* 2019; see Figure 2-1 below). The three schools of land reform theories will be helpful for legal reform (Figure 2-1). Other theories of land reform are also identified. On the one hand, there are those that support land policy should be entrenched in an approach of social capital, and, on the other hand, those that support individual land tenure systems to be more effective (Obeng-Odoom, 2012). Legal reform that will be 'significant' and 'sustainable' should tend towards the middle of the continuum by adopting adaptation theories. In these countries, land reform has been centred on the use of replacement theories, which may have been a contributing factor to the programmes' lack of success. In Mozambique, land reform is considered exemplary, possibly because the theory guiding land reform is closer to adaptation theory (Hull *et al.,* 2019).

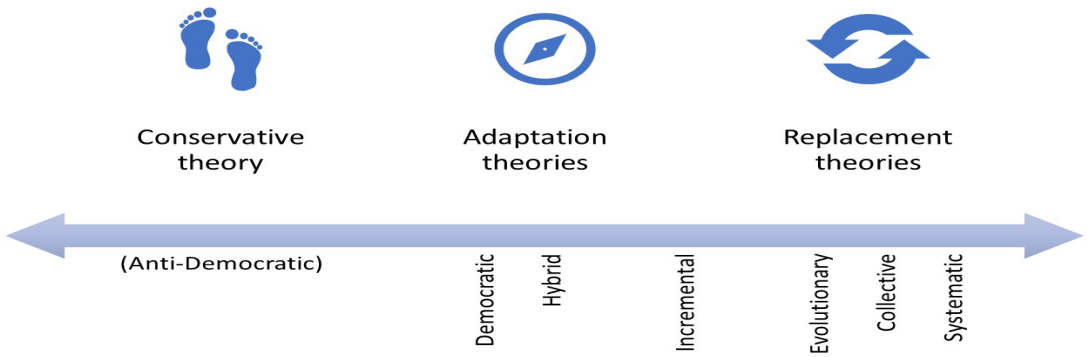

Figure 2-1. Three schools of land reform theories (Hull *et al.*, 2019: 7, reproduced with permission)

For Alden Wily (2000), tenure reform is set in the context of democratisation which also follows the principle of adaptation theories (see also Hull *et al.*, 2019). She states that getting the balance right is what democratisation is all about. The state of land reform in SSA can be "glass half-full, glass half-empty" (Alden Wily, 2012c: 13), which describes reforms laying down essential precedents and the reforms that are less transformational than expected.

Her further analysis suggests the existence of the "colonial-introduced paradigm" causing injustices responsible for the majority of the SSA populace that is still landless or making the majority an occupant of land rather than owners of the land (*ibid*.).

Other analyses suggest the adoption of a community land tenure model. According to Bassett (2007: 18), "selecting community land tenure model, was a sensible option for keeping land in the community and protecting the least able." Drawing from Bondeni in Tanzania (Bassett, 2007), Benjaminsen *et al*. (2009) take a similar position, stating that in many cases sufficient tenure security is provided by indigenous land rights. As a result, despite those who believe customary tenure should be marginalised or even abolished, most studies have indicated that customary tenure is sufficient to provide tenure security in pursuit of development.

Except for a bundle of rights that is privately owned, the incentive to invest cannot be guaranteed (Dobb, 1963; Feder *et al.,* 1986; Roth & Haase, 1998). Sustainability in respect of a bundle of rights can only be possible when policymakers and decision-makers see the need to design a system based on the conditions of the people; this is only when *success* can be achieved "and the outcome will be *significant* for land rights holders" (Babalola, 2018: 117). For example, cadastral system development in the context of customary land rights was studied in South Africa (Hull and Whittal, 2020). It was stated that the government's failure in land reform programmes is partly due to the government's approach lacking *significance* for land rights holders. Hence, it was not sustainable and has failed to succeed (*ibid.*).

2.2.5 Individualisation of land and economic development

The adherents of individualisation of land claimed that individual land rights through land titling empowers women, and there is no form of discrimination on a gender basis (Agarwal, 2003). The adherents consider three things: firstly, results showed that, in some cases, land titling concentrated land in the hands of the rich and the elite, a class exclusively male. The

context of SSA embracing land titling may affect more women negatively than positively. This is evident from the result of land titling in Africa and elsewhere (see sections 2.2.2 and 2.2.3). Secondly, while customary law discriminates against women in some instances, the question is whether statutory laws are any better. The study examining the Nigerian LUA of 1978 (Babalola and Hull, 2019a) provides insight: land acquisition, land grabbing, and expropriation are accomplished with statutory laws with scant consideration of the impact on women. Nwapi (2016: 146) states that the problem suffered by women "occasioned by the LUA's facilitation of land grab is difficult to redress". Although traditional law is noted to be discriminatory towards women, many women prefer to identify with traditional law because it is vital in society. Thirdly, social justice is possible through traditional courts. Seeking justice in the formal courts is expensive, time-consuming, and too technical.

However, the proponents of individual land rights as a panacea for economic development are based on a "capitalist system of production" (Obeng-Odoom, 2012: 162). The idea is the provision of property rights to access credit, unlock dead capital, or reduce poverty. Sastraningsih, Rosyadi & Dio Prakoso (2020: 157) stated that in some cases, "economic growth has no significant effect on poverty". In some developed countries, adopting individual land rights has not helped reduce poverty or ensure tenure security. De Soto (2000) proposes that land can be traded or used as collateral for credits. Some studies have shown that even in the most desirable circumstances, financial institutions are unwilling to give credit based on using rural land as collateral in SSA (e.g., Domeher & Abdulai, 2012). In that sense, rural land is not seen as capital waiting to be unlocked. Others argue that adopting individual land rights is economically advantageous for both land rights holders and the state (*Ibid*.).

Anti-customary LAS theorists advocated for a total reform, including nationalising land, because customary land tenure systems hinder effective land markets (De Soto, 2000; Peter, 2009). Despite the nationalisation of land, customary land tenure systems are the primary

land systems of land access in SSA countries (Alden Wily, 2012a). However, the notion behind the nationalisation of land is to allow governments access to land without hindrance and then turn towards individual ownership of land (Lusugga Kironde, 2000; Abdulai and Ndekugri, 2007; Babalola and Hull, 2019a). Nationalisation of land is used to replace customary land tenure systems with statutory land tenure systems (Anderson, 2006). Asante (1997) found customary land tenure capable of addressing the needs of local people. He argues that the nationalisation of land by the state should be avoided.

Other scholars also supported customary land tenure systems. Alden Wily (2012a) argues in favour of customary land tenure practised by many African communities. She further advocates for a pro-poor approach to secure customary rights. Similarly, Antwi (2002) stated that customary land tenure systems could not hinder economic development because they operate with the economic laws of demand and supply. In Nigeria and Kenya, the customary land tenure system catalyses poverty alleviation as it provides land for subsistence farming (Mabogunje, 1990). Atwood (1990) argues that customary land tenure systems offer tenure security. He further argues that the challenges of the current customary land tenure systems are caused by an attempt to impose statutory LASs in SSA. The enforcement of title registration exposes customary land to land market transactions. (Anderson, 2006).

2.2.6 Land title registration in customary land tenure systems

It has been argued that land title registration provides security and certainty for land rights holders in customary land tenure (Abdulai & Antwi, 2005; Nwuba & Nuhu, 2018; Oluwadare & Kufoniyi, 2019; Ige, 2021). But recent research has shown that land rights insecurity and uncertainty persist after registration (Abdulai & Antwi, 2005; Abdulai, 2010; Babalola & Hull, 2019b). For instance, in Ghana, 12 380 land cases were filed in law courts between 1999 and 2006. Of these filed land cases, 17% of them were registered while 53% of these cases were decided against the registered owners (Abdulai, 2010). In the Honduras and

Philippines, 10% and 15% of registered land respectively are estimated to remain under ownership disputes (World Bank, 2005). Cotula, Toulmin, & Hesse (2004) state that land registration might aggravate land disputes with the rich claiming more than their entitlements under customary systems. They further argue that the vulnerable may find their land registered to someone else. In their review, Abdulai & Antwi (2005: 418) ask a pertinent question: "If the registration of title is meant to guarantee security and certainty of property rights, why should there be land disputes or conflicts (insecurity of property rights) on registered parcels of land?" According to them, land title registration finds support from the Torrens System. They argue that the motives of the Torrens System were not initially conceived for land registration but an idea of a "ship registration system" where a shipowner was assigned a certificate that includes ship information. Barry & Asiedu (2016: 67) echo Abdulai & Antwi's observation that "Few conventional land registration systems are designed to manage complex, changing land tenure relationships, especially when interests in land are changing and contested." Kingwill (2005) suggested an inclusive approach to land administration that will serve all citizens better than technical or bureaucratic land administration. An inclusive approach to land administration implies a participatory approach and the employment of pro-poor tools to land administration. This inclusive approach will address the needs of peri-urban and rural dwellers.

Despite the notion behind land title registration and its failure to prevent land disputes, why is it still used in SSA countries as the means to record land? The motives behind land title registration have been market-driven, to enable land transactions rather than to ensure land tenure security. Abdulai *et al*. (2007) supported this view stating that land registration might reduce tenure security in certain situations. They conclude that ensuring land tenure security entails a multi-faceted approach and that land registration is not a panacea. Deininger & Feder (2009) correctly perceive land registration as helping to improve credit access *in some cases*. Still, the inability of land title registration to confer security and

certainty on land rights holders in SSA makes it less effective in tackling the land needs of the rural populace (Abdulai & Antwi, 2005; Obeng-Odoom, 2012).

2.2.7 Land registration and agricultural productivity

There are positive and negative views on the link between land title registration (statutory land administration) and agricultural productivity. Lawry *et al.* (2014) showed mixed findings in identifying gains in productivity and investment in agriculture in the Latin American and Asian cases. They argue that the link is negative in Africa because of the low level of wealth and income of African farming families (Lawry *et al.*, 2014; 2017). A mixed result was the impact of land titling, and registration in Peru, with Fort (2008) stating the different effect of land titling and registration depends on farmers' tenure security before land titling. Besides, the land titling and registration programme in Mexico caused land ownership to be more concentrated, causing unequal land distribution (Mc Arthur, 2016).

On the adverse effects, the studies conducted in Africa showed no positive impact of land title registration on agricultural productivity. Atwood (1990: 668) attributes the adverse effect to the failure to consider "the extra-legal, informal, local institutional environment through which most rural Africans acquire and maintain their claims to land." Place and Migot-Adholla (1998) found no impact of title registration on agricultural productivity in Kenya where the land market activity was deficient. Tenaw, Zahidul Islam & Parviainen (2009) argue that low productivity in agriculture is caused by an increased rate of poverty linked to the maladministration of land ownership rather than land title registration *per se*. Following the same argument, Domeher and Abdulai (2012) stated that land registration increases tenure insecurity in Africa. Sossou and Mbaye (2018) also found in Benin City, Nigeria, that holding a customary right to land increases the security of farmers more than owning a land title.

The different outcomes could be attributed to different contexts, particularly outside SSA. It is acknowledged that infrastructure to support the implementation might be available on

other continents (Williamson *et al*., 2010). However, in the SSA context, increasing agricultural productivity alone does not justify land title registration. Imposing a westernized concept in SSA rural areas might not be *significant* for land right holders, which makes land title registration not *successful* and *sustainable* (Hull & Whittal, 2017).

As discussed in the sections above, customary law, tenure, and administration are resilient to date. Hence LASs with their legal framework, which is the object of this research, operate in a plural environment where customary and state actors use different norms. Land policy development to accommodate the plural environment is lacking, making reform in land policy lack *significance* and *sustainability*. This situation necessitates that legal pluralism is central to the management of land in SSA. Legal pluralism can help identify the power dynamic between actors by identifying the normative frameworks used to regulate transactions (Merlet & Bastiaensen, 2012).

2.3 The Nature of Legal Pluralism

This section discusses the nature of legal pluralism (weak and deep legal pluralism), different forms of legal pluralism as combative, competitive, cooperative, and complementary are presented in section 2.3.1. Section 2.3.2 reflects approaches of incorporating the Non-State Justice System (NSJS) which are presented with bridging, harmonisation, incorporation, subsidisation, and repression explained. Section 2.3.3 explains the counters to legal pluralism. All these are discussed and related to land administration with legal pluralism in land administration presented in section 2.3.4. The discontinuities between legal practitioners and traditional leaders are explained in section 2.3.5. In section 1.2.1, legal pluralism is defined. The concept of legal pluralism is mentioned by several disciplines such as law, sociology, and anthropology. There are many versions as legal pluralism is still the subject of active research (Vandelinden, 1989; Baldarelli, 2018). Given this, mapping or examining the literature in all disciplines would be a project on its

own. Hence the following sections review only the literature relevant to addressing the research objectives.

2.3.1 Deep vs. weak legal pluralism

As explained in Section 1.2.1, legal pluralism is a term used when different forms of law (particularly customary and statutory) are applied within the same geographical area or in the same population (Ndulo, 2017; Fisher and Whittal, 2020). The extent and nature of legal pluralism can vary widely – the mix of statutory and customary forms of law may have many forms, with customary and statutory conditions having different weighting (Gebeya, 2017). Weak legal pluralism is when alternative legal systems are only recognised as bodies of law when acknowledged by a sovereign or through statute law. Deep legal pluralism recognises that alternative forms of law are equally valid and are not dependent on state recognition (Woodman, 1998). Panlegalism reflects the position that all forms of law are derived from customary law, so all are on a continuum of customary law, including state-centred law. Regardless, there is little contestation that there are differences in law based on differences in beliefs and normative possibilities.

It is essential to reflect that customary law stood alone in pre-colonial societies (Ndulo, 2011). However, customary law was not homogenous and different bodies of customary law co-existed. Even then, legal pluralism was evident. However, when we refer to legal pluralism in SSA today, we invariably refer to the co-existence of statutory and neo-customary laws. Statutory law received the law from the colonial era; neo-customary law evolved from customary law. The nature of the interaction between these legal systems reflects the contested history, and development, of many African nations (Woodman, 2011; Gebeye, 2017). Within post-colonial SSA LASs, the nature of legal pluralism is likely to fall somewhere on a continuum between deep legal pluralism (Woodman, 2011) and state-centred legal pluralism in which customary law requires recognition by governance

structures and processes derived from the colonial era (Austinian ideology of state centralism – state law pluralism).

Deep legal pluralism is no longer a "descriptive tool" but a "policy field" (Gebeye, 2017a: 229) that is necessary for the promotion of the rule of law and development discourse (Kyed, 2011; Faundez, 2011). Janse (2013) and Tamanaha (2015) substantiate legal pluralism as a policy field after the failure of law and development efforts led international development agencies to explore non-state justice systems (NSJS) in African states (*ibid*.). Davies & Trebilcock (2008) maintain that law and development are state-centric, focusing on using statute law for economic growth and social change. Tamanaha (2011) stated that the promotion of the rule of law and development is being hampered by excessive statist and legalistic approaches to law and development. The failure of statute law in promoting the rule of law and development prompted international development agencies to seek alternative and supportive systems (Janse, 2013; Tamanaha, 2015; Gebeye, 2017a). Hence the NSJS became attractive for promoting the rule of law with legal pluralism (Kotter, 2015). See the different approaches of incorporating the NSJS in section 2.3.2.

The concept of legal pluralism suggests that statute law is not the only source of law and legality. Non-state law is also a source of law that has efficacy and legitimacy within the society (Galanter, 1981; Griffiths, 1986). In Africa, the typical feature of legal pluralism is the co-existence and application of customary, religious, and statutory law in the same geographical space (Woodman, 2011). "Twofold" legal pluralism, also called ***new*** legal pluralism, exists in contrast to ***classic*** legal pluralism. New legal pluralism is the "application of international, regional, and sub-regional laws in a state" (Santos, 2006: 45), while classic legal pluralism is the "application of customary, religious, and statutory laws in a state with or without state recognition" (Merry, 1988: 872). Legal pluralism can be created from 'above' or 'below' (Gebeye, 2017a). Legal pluralism is formed from above when international, regional, and sub-regional laws are applied by member states of international

bodies, which in this respect includes the application of the United Nations and African Union treaties. The application of customary and religious law by traditional institutional and religious leaders creates legal pluralism from below (Gebeye, 2017a). Legal pluralism from above and below is used to preserve the well-ordered "function of life and deliver justice broadly conceived" (*Ibid.*:342).

Despite these scholars' views of what constitutes legal pluralism, legal pluralism is a highly contested term in sociology, anthropology, and law. Several opposing views exist. At issue is whether two systems can operate equally, or one system dominates another. On the one hand, whether in colonial times, customary laws were used in human interactions or statutory laws were imposed. On the other hand, in post-colonial times, is statutory law superseding customary law? This research recognises the existence of these debates. It aligns with the complementarity of legal systems in the sense that law should apply to people's everyday lives, and customary governance systems are already filling the gap in state administration (see also Knight, 2010). For example, the use of Alternative Dispute Resolution (ADR) mechanisms to settle disputes expediently, rather than enduring prolonged legal processes in the formal courts.

The legal pluralist approach argues that there exists a state of pluralism of law in every society (Tamanaha, 2007; 2008). Sack & Minchin (1986) see legal pluralism as an 'ideological stance' which uses plurality as a tool to be used rather than eliminated. Griffiths (2004: 9) criticises legal centralism in three instances: "the concept of law as universal across time and space; its monopolistic claim to state power over the recognition, legitimacy, and validity of law; and the state's claim to integrity, coherence, and uniformity." Moore (1978) argues that different legal orders exist in developing a theory of pluralism of law and affect how they operate. He further argues that it helps understand how a legal change is involved.

Phiri (2022) used an interactional approach to study the relationship between state law and indigenous law, which reveals that state law extinguishes indigenous law in some instances (Westermark, 1986; Phiri, 2022). According to Westermark (1986), we cannot take subjection and exploitation for granted as unavoidable results, which places legal pluralism somewhere between weak and deep. Von Benda-Beckmann (2002) has observed a problem that confronts pluralism. This problem involves taking pluralism to mean dualism and ascribing the same meaning to both terms. It is usual to use the term 'legal dualism' to describe the pairing of international law and national law. They propose that all components of law, conceptualisations of legally generated scenarios, norms of relevance, and consequences should be regarded as being part of legal plurality. This agrees with Woodman (1998) who maintains that state and non-state legal orders are not often, if ever, coherent. He argues that "systems of law do not exist", and that it will be impossible to distinguish clearly between unitary and plural legal settings, since pluralism in the law applies everywhere: "Legal pluralism is a non-taxonomic conception, a continuous variable" (*ibid.*: 54). Woodman's view reveals that legal pluralism is on a continuum where weak and deep pluralism are on the two extremes with other forms of pluralism in-between. Therefore, everything is plural; what differs is the degree of pluralism.

I found Gebeye's approach (2017) to decoding legal pluralism in the African context especially useful. From a theoretical, historical, and comparative perspective legal pluralism is a unifying device for legal system in Africa (*ibid*.). legal pluralism connects and incorporates pre-colonial laws into colonial legal systems in a classic sense. He supports the weak and deep sense of legal pluralism shows the "manifestation of the unity of legal systems and the plurality of laws in Africa" (Gebeye, 2017: 228). Deep legal pluralism demonstrates the practical constraints of nations' ability to disseminate and implement their laws across their territory, whereas weak legal pluralism is a manifestation of the unity of legal systems (*ibid*.). In the new sense, legal pluralism makes regional and international

laws part of the state legal systems (*ibid*.). He finally asserted that despite the existence of deep legal pluralism, parallel legal system does not exist. I would argue that this decoding of legal pluralism should not be restricted to Africa alone. Legal pluralism is not a recent happening arising in the 60s alone. It is as old as land invasion and colonisation. There will always be similarities and differences.

Different forms of legal pluralism are identified in literature by Swenson (2018: 440) as "combative, competitive, cooperative, and complementary legal pluralism." These are briefly discussed below.

2.3.1.1 Combative legal pluralism

In a non-violent manner, the NSJS rejects the state system's land administration institutions (Swenson, 2018). NSJS and the state may attempt "explicitly to undermine, discredit, supplant, and ideally destroy the other" *(ibid*.: 443) when the normative principles of customary and statutory legal systems are not equally accepted. For instance, in the fight against herders in Southwest Nigeria who are forcefully taking over land for grazing purposes, there was the establishment of structures of security and community policing by traditional institutions that worked parallel to their equivalent state institutions. Combative legal pluralism is common in countries going through insurgency or separatist movements, with NSJS used in several campaigns (Kasfir and Mampily, 2015). It also thrives in post-conflict state-building (Swenson, 2018). In many instances, this can be likened to the limited or lack of collaboration of state institutions with non-state land administration institutions.

2.3.1.2 Competitive legal pluralism

Non-state actors retain some form of autonomy in land administration while not challenging the state's overarching authority. This form of legal pluralism is evident in developing countries and post-conflict countries. The state tries to exercise control in places outside its jurisdiction or where there is ownership conflict. Moreover, in many developing countries, customary leaders maintain autonomy and order in their jurisdiction without recourse to

state officials (Migdal, 1988). Tamanaha (2008) explains the feature of competitive legal pluralism to indicate that deep tensions exist between the state and non-state legal systems because of the diversity between legal norms. Despite the uncertainty, the state's formal judicial authority does not feel endangered because the non-state actors do not supplant state authority. The state and NSJS respect each other's rights to co-exist and engage to provide some degree of autonomy to NSJS (Baker and Scheye, 2007).

2.3.1.3 Cooperative legal pluralism

In a situation of cooperative legal pluralism, NSJS still retains significant autonomy and authority. Customary actors accept the state's normative legitimacy, willing to work together for the common benefit of the people. There are frequent clashes between statutory and customary actors about social issues which statutory actors undermine. NSJS actors do not undermine state judicial powers. This form of legal pluralism tends to thrive where the rule of law binds democratic governance. As per Swenson (2018), a cordial relationship between state and non-state actors is not established with either democracy or the rule of law. This form of cooperation between the state justice system and NSJS is only in relationship and not in terms of substance (*ibid.*). Human rights can still be violated by the state or non-state actors and oppress the citizens or certain groups that are systematically discriminated against (Swenson, 2018).

2.3.1.4 Complementary legal pluralism

Legal pluralism is complementary in a state with a high-capacity and effective legal system. In complementary legal pluralism, non-state actors are subjugated and structured by the state. Complementary legal pluralism's legitimacy to enforce its law and its accepted rule are key features (Mac Ginty, 2008: 142). The countries with a high-capacity legal system allow for Alternative Dispute Resolution (ADR): mediation, negotiation, conciliation, arbitration, and adjudication: "They share the feature that a third party is involved who offers an opinion or communicates information about the dispute to the disputants"

(Shavell, 1999: 1). ADR is defined as systems, processes, and strategies created to supplement the current dispute resolution procedures with quicker and more efficient ones (van der Bank and van der Bank, 2017). In some civil matters, disputants are allowed to settle their case outside the court before being allowed access to court (Stipanowich, 2004). Despite all these alternative ways of resolving disputes, state and non-state laws can still clash substantively and procedurally. State law and legal process may be violated during arbitration agreements, but the extent of the violation depends on the preference of state officials. The natural and perceived "inefficiencies and injustices by the traditional court open the channel for ADR processes" (Edwards, 1983: 668). There is complementarity in terms of governance perspective because the state provided an alternative source of resolving the dispute outside the formal court proceedings.

Complementary and cooperative legal pluralism have similar features to some extent, except that under complementary legal pluralism, NSJS actors are not bound to reject state decisions because they are under the state authority without substantial autonomy. Only complementary legal pluralism can uphold the requirements of the rule of law (Carothers, 1998). The complementarity in legal pluralism refers to the relationship between state and non-state justice.

2.3.2 Approaches for incorporating the non-state justice sector

2.3.2.1 Bridging

This strategy is helpful in competitive and cooperative legal pluralistic environments. Bridging works well in situations where there is an increase in the demand for state justice which impacts the authority and autonomy of non-state leaders. State authorities allocate cases between state and NSJS using state law, participants' preferences, and venue appropriateness. In the bridging approach, serious crimes (murder, rape, theft) must be resolved in state courts, while civil matters are left to NSJS. There is always a public

awareness on how to enhance understanding of the state legal system and access it. Providing legal aid can assist citizens in accessing state courts.

2.3.2.2 Harmonisation

In this strategy, the NSJS is streamlined to have an output consistent with the state system's values by incorporating and legitimising NSJS to some extent (Swenson, 2018). To ensure harmonisation, international donors, and state fund activities of NSJS practitioners act in line with state law. There is the unarticulated perception by the state actors that the non-state actors maintain an important level of autonomy, authority, and independent legitimacy. Normative differences in the adjudication process are accepted, unlike trying to make NSJS act like a state justice system. Certain legal matters are of interest, for instance, non-state actors' treatment of women (Chopra and Isser, 2012). Campbell and Swenson (2016) highlight that judicial actors discriminate against women, but this is done using state law and not accepted norms and practices. A successful harmonisation approach depends on the state's ability to provide a legitimate dispute resolution mechanism (Swenson, 2018), which frequently occurs in competitive and cooperative legal environments (*ibid.*).

2.3.2.3 Incorporation

The distinction between state and NSJS is removed from the state's perspective. State officials regulate NSJS decisions before they are endorsed. The incorporation strategy may indicate the creation of a customary court with state support and regulation or allowing appeals from non-state courts to state courts. Request or ratification by the state system is required for the decisions of the non-state system. For instance, customary court decisions regarding peri-urban property may be appealed before a higher statutory court. To the extreme, the entire NSJS is brought under the state justice system's purview (Peter and Ubink, 2015). Despite allowing NSJS to grow, the incorporation strategy is to impose authority practically and ideologically over non-state actors by limiting independence and jurisdiction. The state uses codification of customary law in the incorporation approach,

which may lead to the creation of new non-state law. The incorporation strategy's effectiveness hinges on the ability of state action to compel non-state judicial actors to engage with it. This dynamism is possible in a cooperative environment and probably in competitive scenarios but not likely in combative environments.

2.3.2.4 Subsidisation

The non-state system is, to a large extent, excluded, but "the state system receives assistance to increase its capacity, performance, and appeal relative to the non-state system" (Swenson, 2018: 448). The techniques of subsidisation occur across sectors "legislative reform, capacity building, and establishing physical infrastructure" (*ibid*.), used by the justice sectors, supporting symbolic representation, and promoting public engagement" (Swenson, 2018: 457). The non-state judicial actors are not required, unlike in harmonisation, bridging, and incorporation, where non-state judicial sectors are actively involved. The main task in the subsidisation approach involves how law, courts, and judges are constructed and the enforcement mechanism is made available (Fukuyuma, 2004). This strategy can be implemented in any environment, whether competitive, combative, or cooperative legal pluralism. It was usually used in post-conflict settings and the building of state judiciaries. The relationship between the state and non-state justice system is generally influenced because subsidisation helps improve the performance in respect of state justice, legitimacy, and effectiveness (Swenson, 2018).

2.3.2.5 Repression

The state outlaws NSJS by enforcing the state mandate (Forsyth, 2009). In most instances where the state can prohibit the NSJS, the state is already predominant. Where there is an effort to undermine and eliminate the non-state actors in the attempt to eradicate the non-state justice actors, repression results in reciprocal violence by non-state actors. In addition, violence by non-state actors can also result in state repression efforts. There is no constructive engagement in the repression approach like incorporation, harmonisation, and

bridging practices. Hence repression cannot work with any of the three either. The state justice system's authority and effectiveness are ensured and protect the judicial power from attacks. Despite the unpleasantness in practice, repression may be helpful when non-state judicial actors threaten the state, especially during an insurgency. Using repression alone may not be sufficient, as the monopoly of the legal system may not be sustainable over time (Beetham, 2013).

2.3.3 Counters to legal pluralism

Some argue that legal pluralism is not a true reflection of a democratic constitutional state that observes human rights and the rule of law principles. The argument for legal pluralism has come under attack from opponents to legal pluralism.

Santos (2002) argues that the concept of legal pluralism is not, essentially, beneficial, progressive, or emancipatory. He concluded that the co-existence of multiple laws does not necessarily require each law to be self-adaptable from the other (Santos, 2006). The process of recognising multiple laws is complex. The question then is, can two systems of law operate equally, or will one dominate the other? Von Benda-Beckmann and Turner's (2018) opinion is helpful. They state that people in the colonial period had a choice to choose one legal system over the other and that the state was active in creating multiple legal orders. According to them, multiple laws exist, in that multiple legal systems existed in the colonial period. Woodman (2011) argues that colonial powers gave some recognition to customary law. Stewart (2003) and Hellum *et al*. (2007) reflect that chiefs were empowered to administer customary law in exercising their powers and improve stewardship over land administration against women's land rights. Strengthening this line of argument, von Benda-Beckmann and Turner (2018) state that customary laws were adopted into all colonial legal systems and there are periods of proximity and distance in the connection

between local and state law. The view stated above was part of the answer to the existence of multiple laws, and that statute law was intended to dominate over customary laws.

In answering the question of customary law being inferior to statute law, McAuslan (2006) states that one of the pillars of the land laws of all African states has always been customary tenure. It is not an addition to inherited law; rather, inherited or received law is the addition. Thus, inherited law must be modified and accommodated to indigenous law rather than the other way around, and those who support received law should be arguing in favour of legal pluralism.

The difficulty and multiplicity in the plural legal configuration were because of colonial administrative activities (von Benda-Beckmann & Turner, 2018). The colonial state accepted and codified indigenous laws as indigenous people interacted with the order of the colonial state (Obatusin, 2018; von Benda-Beckmann and Turner, 2018). In this process, they were embedded in the dynamics of traditional and religious normativity (*ibid.*). However, the act of encoding laws is bound to change them as they are viewed by the other. They are also fixed in time, while customary law is fluid in time – one of its most important features. Gebeye (2017a: 243) asks: "how much should the state legal system accommodate customary and religious laws?" According to him, the post-colonial legal system in Africa is structured hierarchically. He argues that the post-colonial legal system acknowledges customary laws conforming to the Constitution. Englebert (2009) and Young (2012) state that the strength of post-colonial African states to exercise their power and laws throughout their territory is lacking. Also, the supreme authority of the state cannot be violated or withdrawn from its numerous ethnic groups (*ibid.*). The state is therefore accepted as a sovereign entity that avoids the existence of a parallel legal system. To support this line of argument, the Nigerian 1999 Constitution, section 1 (3), states that "if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void." In law, this is termed a

'repugnancy clause'. It should not violate the principle of natural justice, morality, public order, equity, and a good conscience (Mamdani, 1996; Nwocha, 2016; Nwapi, 2016). This is an example of weak legal pluralism in which indigenous laws depend on the received legal system and what survives the imposition of foreign law is a distorted subset of pre-colonial African customary law.

The prevalence of the constitution shows the supremacy of the state legal system over other legal systems. Gebeye (2017b) argues that it is empirically erroneous and awkward to assume parallel legal systems exist in Africa. He further states that ascribing legal pluralism to the existence of parallel legal systems in Africa is more a "myth than a reality" (*ibid.*: 42).

Gebeye states that the introduction of the colonial laws ended the pure pre-colonial legal system. In Nigeria, there was stiff resistance to alien rule (Tamanaha, 2008; Rhoda, 2015). One peculiar feature to describe Nigeria's colonial legal system was the establishment and recognition of informal customary courts run by local elders (Rhoda, 2015; see also 5.8). However, the emergence of colonialism re-imagined socio-economic, political, and legal life in Africa.

2.3.4 Legal pluralism and land administration

In the context of land administration, legal pluralism is associated with uncertainty in respect of land tenure and land adjudication. After independence, legal pluralism creates uncertainty because of multiple legal frameworks underpinning land administration. Both of these legal frameworks may be chosen strategically by land rights holders as the basis of their claim to the land, referred to as "forum shopping" (Meinzen-Dick & Pradhan, 2002: i). There may be reduced certainty because *forum shopping* [5] does not comply with the rule of

[5] Forum shopping is the ability of an individual to choose one legal framework from multiple legal frameworks that best address their concern (Von Benda-Beckmann, 1981). A shopping forum is when existing institutions claim legitimacy among competing institutions (Sikor and Lund, 2009).

law (von Benda-Beckmann, 1984). Also, legal pluralism can create uncertainty in terms of a land claim because it is challenging for land rights holders to know all the laws governing land claims (Meinzen-Dick and Pradhan, 2002). Bisoka, Giraud and Ansoms, (2019) investigated competing claims over land access in Rwanda. It was shown that power relations determine the dominant legal framework (*ibid*.) Forum shopping and shopping forums as they relate to land claims in Rwanda were manifested when customary and state actors clashed over customary and state law as they applied to determining the owner of a marsh. Using state law, the government suspended some of the customary actors for their hesitance to allow the state to redistribute the marsh by laying claim to the marsh using customary law.

Legal pluralism in LASs exists without customary and statute law having equal and similar recognition. An economic approach to land rights is adopted over the socio-institutional approach to land administration, which has similarities to adopting statute law over indigenous laws. This notion of a parallel legal system should be examined rather than taken for granted. Von Benda-Beckmann (2002) states that pluralism should be extended to all elements of law and with the same standard of relevance. A central feature of this form of legal pluralism was tailored towards assigning supremacy or monopoly to statute laws in LAS. Adaptation theory is opposed to this form of dominance and monopoly, which undermines and reduces the capacity of indigenous laws to regulate and administer land in rural and peri-urban areas.

Mafeje's (2000) concept of Afrocentrism does not support pluralism. His view supports the recognition of variety as imperative for democratisation and equally enriching in the long run. What he referred to as 'accumulation from below' in SSA is what I termed 'administration of land from below using customary law' in this study. Thus, his view on the misconception of land tenure and customary land law, and its socio-economic implications

for rural development, is relevant for this study. Advocating for the development of social democracy and social organisation makes his view worthwhile (Mafeje, 2003).

Tchatchoua-Djomo (2018) analysed Burundi's land governance, institutional pluralism, and tenure security. Land governing institutions were created due to reform in land governance, which promotes confusion between state and non-state authorities regarding which rules to apply and their roles in mitigating tensions over land ownership and property rights. (*ibid.*). Analysing legal pluralism and land tenure in Ghana, the findings of Boamah & Walker (2016) showed that there is friction and disjuncture within property regimes. They found that for land to be illegally occupied, both customary and statutory legal systems must have been violated, and for land to be legally occupied, both systems must have been complied with (*ibid.*). When either of the systems is broken, it is considered "truly illegal" (*ibid.*: 99), and especially when one complies with a customary legal system, the statutory may be violated (Boamah & Walker, 2016).

2.3.5 Discontinuities between legal practitioners and traditional leaders

Legal practitioners and traditional leaders are not expected to be knowledgeable experts outside their domains of practice (Meinzen-dick & Pradhan, 2002). Lawyers are more likely to be knowledgeable about statutory laws, while traditional leaders are most likely to be knowledgeable about customary laws (Meinzen-dick & Pradhan, 2002). The lack of overlap of knowledge may affect tenure security and land adjudication.

Legal pluralism may help deal with many land problems as it offers alternative means of resolving disputes over land. In West Sumatra, legal pluralism helps the local and Nagari governments address land tenure issues by providing various ways to resolve conflicts over land (Tegnan, 2015). However, it brings about inconsistency and contradiction between regulation and practices *(ibid.*). In developing countries, the NSJS is recognised as necessary in delivering justice and security (*ibid.*). With particular reference to Nigeria, Rhoda (2015)

states that legal pluralism promotes questions about tradition and the efficacy of the law in many African societies. He also found that existing problems are brought into focus, and new issues are created with the adoption of legal pluralism, although some social concerns are being addressed.

2.4 Responsible Land Management

2.4.1 The importance of responsibleness in land management

Zevenbergen *et al*. (2015) state that 75% of people in SSA are excluded from the formal LAS. The exclusion results in the so-called land administration divide in which the poor and marginalised (excluded from the formal LAS) experience tenure insecurity while the rich have access to formal LAS (Bennett *et al*., 2008; Babalola and Hull, 2019b). The land administration divide has led researchers to seek alternative approaches to land administration. For instance, Enemark *et al*. (2014) developed FFPLA. Zevenbergen *et al*. (2013) proposed a pro-poor land recordation system, and Simbizi *et al*. (2014) developed a pro-poor land tenure security model. Ensuring tenure security and livelihood sustainability for the poor is central to the purpose of the pro-poor approaches in LAS (UN-HABITAT, 2012). The livelihood strategies of the poor are considered in the pro-poor land administration design by providing equitable access to land and promoting an array of land rights (Obeng, 2018). The unconventional approaches using pro-poor land tools offer a simple yet effective form of land administration (see Babalola and Hull, 2019b).

In Africa, land pressures are evident, resulting in urban and rural divides affecting person-to-land relationships, including land access, use, and ownership (de Vries *et al*., 2021). Responsible and smart land management is required to resolve these challenges (*ibid*.).

The movement towards sustainability in peri-urban areas has inspired research on developing instruments to support peri-urban territorial development (de Vries and Chigbu, 2017). Land management is identified as having an important role in the creation of sustainable peri-urban communities (*ibid*.). The decision-making process in land

management is complex and dynamic, with complexity and dynamism requiring some principles to aid the decision-making process. Such principles may be embedded in RLM. In this context, 'responsible' is explained as "building collaborative relationships with citizens and groups of citizens, encouraging shared responsibilities, disseminating information to elevate public discourse and foster a shared understanding of general issues, and seeking opportunities to involve citizens in government activities" (Bourgon, 2007: 528).

Identifying the need for RLM, several attempts have been made to address weak land management. The following sections discuss the concept of RLM and the approach to RLM assessment in land administration.

2.4.2 Concepts of responsible land management

The concept of RLM is not new in the land domain (de Vries & Chigbu, 2017). Several publications use 'responsible' as a qualifier in the land domain, e.g., the *Voluntary Guidelines on the* ***Responsible*** *Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, or VGGTs (FAO, 2012); *Advances in* ***responsible*** *land administration* (Zevenbergen, de Vries, and Bennett, 2015), and ***responsible*** land governance (GIZ, 2018). Different forms of responsibility can be moral, organizational, and societal (Albin, 2017). Hence 'responsible' can be deployed by many professionals and scientific communities to use, adapt, and relate to their thematic field (de Vries & Chigbu, 2017). Responsibility refers to governance structure, processes, and outcomes. Hierarchies of government administration and organisational mandates relate to responsibility in governance structures resulting from an institutional design (*ibid*.). Bourgon's (2007) description of a paradigm shift in public administration in the first decade of the 21st century serves as the foundation upon which the elements of 'responsible' governance processes were derived. Institutions, agencies of government, and individuals need to do more to be responsible, responsive, and respected. When used in this context, 'responsible' refers to the need to engage in activities such as fostering cooperative relationships with individuals and groups

of individuals, promoting shared responsibilities, encouraging information dissemination to improve public discourse and foster a common understanding of societal issues, and looking for opportunities to involve citizens in governmental activities (de Vries & Chigbu, 2017 citing Bourgon, 2007).

Cooper (2012) argues that external and internal organisational obligations should not be the only driver of responsible administrators, but the conflicting demands of public and private interests, as well as the management challenges they present, should drive administrators to develop accountable solutions. Oschman (2004) identified three pillars for measuring the quality of management: quality of service, quality of an institution, and quality of life. Quality of service in terms of LAS relates to existing systems' technical problems and successes, and how new technologies are deployed to overcome these problems. An institution's quality focuses on measuring institutional and technical issues. Also, it involves the level of policy implementation to determine the level of delivery of land administration services. Quality of life relates to total quality management, which includes processes of LAS at all organisational levels, including policy, management, and operational (Ali, 2013).

De Vries and Chigbu (2017) developed a framework based on eight normative notions and goals in structures, processes, and outcomes – see Table 2-1. The framework is based on what constitutes 'responsibleness' in land administration.

2.4.3 Responsible land management matrix

Using the RLM matrix, two approaches are possible: a qualitative and a quantitative approach. The former provides an understanding based on qualitative analysis to understand the state of responsibleness in land management by determining the presence of any of the eight indicators of RLM. This is a simple and straightforward means of evaluating and assessing RLM. Researchers follow a people-based approach to obtain the

necessary data concerning perceptions, opinions, and indicators of actual changes caused by change in land management. A statistical understanding is provided using this approach to determine the responsibleness in land management. A textual justification is necessary for both methods to allow for meaningful interpretation within the context of the responsibleness evaluated. In section 8.3 the qualitative and quantitative approaches are used to evaluate the intervention in land management in Ekiti State, Nigeria (see also 7.6). In Table 2-1 the RLM matrix shows the 8Rs indicators assessed based on the structure, process, and impacts of land management. The understanding of the 8Rs indicators is provided in Table 4-2.

Table 2-1. Matrix for Evaluating and Assessing RLM (de Vries & Chigbu, 2017: 70).

		Responsible Assessment Indicators							
Aspects of land management for assessment		Responsive	Resilient	Robust	Reliable	Respected	Reflexive	Retraceable	Recognizable
	Structures								
	Processes								
	Impacts								

2.5 Human Rights and the Rule of Law

2.5.1 Human rights

How can human rights and the rule of law be sustained under multiple legal systems in land administration? Zwart (2013) suggests that relying on African social institutions will help meet African human rights obligations. The issue of human rights is not alien to Africa. Long before the western concepts of human rights, there were African indigenous human rights. Instead of replacing the indigenous idea of human rights with the western conception of human rights, indigenous human rights should be identified and built upon (Zwart, 2013). Building upon indigenous human rights is when the application can be *significant* in Africa (see Hull & Whittal, 2020).

The receptor approach addresses the issue of human rights in Africa, which stipulates that states should build on their existing social institutions to realise their human rights obligations. The approach further iterated that the state is bound by its commitments to the human rights treaties (Zwart, 2013). Two components of the receptor approach are *matching* and *amplification*. Under the matching phase, sensitivity and respect for every culture are advocated (Mutua, 2002). Social institutions should be identified and related to international human rights requirements to achieve fairness and human dignity. When there is a complete match, the state is living up to its obligations under the international human rights treaties. When there is no match, the state must improve existing social arrangements to conform to its obligations to international human rights treaties during the *amplification* phase (Zwart, 2013). However, respect for local culture is strongly recommended during adjustment to existing social arrangements, in that the reform should add to and not replace the entire existing social structures (*ibid.*).

Obatusin (2018) argues that understanding customary practices is essential for using customary law as a tool for human rights advocacy and a thorough knowledge of international human rights law. He further argued that human rights advocates need to

consider the mechanism used for legal reform. Tobin (2011) stated that a dual approach to customary law is necessary for protecting indigenous people's human rights, including respect and recognition of customary law and the institutions of indigenous people, and secondly, capacity, dialogues, and awareness building among indigenous people.

Van der Molen (2016: 54) asks whether the right to "…property [is] a civil right or a social right?" "… A right is a human right when it is universal, inherent to human beings under humanity alone, and cannot be purchased or sold. It is alienable and cannot be taken away and is equally applicable to all human beings." The relationship is not among the human beings themselves but between the state and human beings (van Banning, 2002). Van der Molen (2016) states that the human right to property entails the protection of an individual against state interference. He questions to which category a human right to property should belong, civil and political rights or economic, social, and cultural rights (*ibid*.). For van der Molen, civil and political rights are individual rights protected by the state while economic, social, and cultural rights oblige the state to implement a policy that covers all citizens (Article 2.1 of the Covenant on Economic, Social and Cultural Rights). Property rights are identified as economic, social, and cultural rights by human rights theorists (Jacobs 2013 and Joireman & Brown 2013).

2.5.2 Rule of law

The rule of law has thinner and thicker conceptions (Tamanaha, 2004). The thinner conceptions relate to 'formal legality' while the thicker conceptions add substantive values such as social justice, human rights, and democracy (*ibid*.). For the 'thin' concept, "the law must be outlined in advance (be prospective), be made public, be general, be clear, be stable and certain, and be applied to everyone" (Tamanaha, 2007: 3) while 'thick' conceptions entail extensive institutional, economic, cultural, and political requirements (West, 2003) which may not all be significant for peri-urban land administration. Gebeye (2019) argues that for the rule of law to be sustained under legal pluralism, SSA states must pursue

'twofold' legal pluralism and a constitutional system that represents the same (see Section 2.3.1). Gebeye (2019) argues that SSA countries pursue a thicker rule of law. He discusses the link between legal pluralism and the rule of law by stating that the rule of law is aimed at an orderly life and justice delivery. More fundamentally, he lays the foundation that the aspects of the rule of law are not only an idea of legal pluralism, "but their practical applications also share the same space with legal pluralism" (Gebeye, 2019: 342). In practical terms, SSA countries have customary laws which empower and, at the same, limit the powers of traditional leaders, with these laws known and having general application within the community (Elias, 1956; Fenrich, Galizzi, and Higgins, 2011). The community or family owns the land, with individuals having rights of possession under customary law (Akuffo, 2009). Under customary law, alienation and dispossession of land are prohibited. Applying this law shows the existence of an "indigenous rule of law" [that is] a functional equivalent of the rule of law" (Gebeye, 2019: 342).

"The Indigenous rule of law" can be compatible with thinner or thicker concepts of the rule of law. Discriminatory laws can be improved by using the receptor approach's matching and amplification phase (see section 2.5.1). Laws compatible with thicker concepts of the rule of law can be improved upon at the matching phase. Gebeye (2019) argues for the promotion of the sustainable rule of law to rely on an inquiry into contradictions and, simultaneously, solutions of the constitutional systems and the two faces of legal pluralism in SSA. Sustainability in the rule of law requires that the process of the constitutional system be participatory. A participatory approach in the constitution will make the outcome *significant* for the people and successfully promote the rule of law.

2.6 Review of Theoretical Framework

Using the GV2000 project in Cape Town as a case study of the fiscal cadastral system, Whittal (2008) studied philosophical paradigms relevant for fiscal cadastral system research. She found a holistic approach and worldviews of technical, social, and personal aspects of the

fiscal cadastral research appropriate (see 3.2.1). In her findings, critical realism and the social systems approach are suitable theoretical bases for cadastral study and help with the understanding of the natural and social aspects of the system. In analysing cases of fiscal cadastral systems, a pluralist multimethodology approach helps identify suitable and complementary tools (Whittal, 2008). LASs with their legal frameworks involve social, political, cultural, and historical contexts (Akrofi, 2013). Critical realism is appropriate as it combines functionalism and interpretivism while simultaneously adopting methodology from different paradigms. (See Mabesa, 2011; Akrofi, 2013; Hull, 2019, who have also found critical realism helpful in their studies). See Chapter 3 for the detailed theoretical framework used in this study.

2.7 Review of Methodological Frameworks

The research is addressed from geomatics, social sciences, and law to various socio-economic, technical, historical, LASs, legal frameworks, and religious contexts. Hence the need to adopt a multi-paradigmatic approach. Because of this, different concepts from different paradigms with different methodological perspectives are needed; hence in addressing the research questions in this study, various methods are adopted (see Chapter 4). A brief review of recent relevant research follows.

2.7.1 Case study

In LASs and legal framework research, the case study strategy has been widely used. Hull (2019) used multiple case studies to assess cadastral development in developed and developing countries. Germany and the Netherlands were used in the developed country context, while South Africa and Mozambique were in the developing context. The mode of data collection was interviewing, documentary evidence, questionnaires, and participant observation by visiting the site, with the LASs' strengths and weaknesses identified in all the cases. Hull (2019) concluded that the liability in the developed context relates to the

insensitivity toward human rights while in the developing context pertains to adopting an inappropriate theory of development.

Similarly, Akrofi (2013), Babalola (2018), and Obeng (2018) have applied single and multiple case studies in analysing rural and peri-urban land problems. The use of case studies was found helpful in their respective studies. This study adopts a multiple-case study to assess LASs and legal frameworks in peri-urban areas of Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti in Southwest Nigeria. See Chapter 4 for the research design.

2.7.2 Systems thinking

The holistic study of land administration is advocated by Zevenbergen (2002) to help better understand the system. The systems thinking approach takes a comprehensive perspective to the components and their interconnections and allows for subsystems. The legal, technological, and organisational subsystems of land registration need to be thoroughly investigated to determine the system's effectiveness and efficiency (*ibid*). Similar to this, Bennett *et al*. (2008) assert that a holistic approach to land organisation for sustainable land administration is necessary. For better land use decisions, integrated management of land is essential. Confusion can result from a lack of integration (*ibid*). Systems thinking and systems concepts are advocated in times of uncertainty and change (Barry and Fourie, 2002), especially soft systems thinking. In the case of South Africa after apartheid, Barry and Fourie analysed the cadastral system and land management and assert that the cadastral system analysis must include land management (*ibid.*).

Akrofi (2013) used soft system thinking to determine *functional* and *dysfunctional* customary areas in Accra and Kumasi in Ghana. He used the 7Es of "efficiency, efficacy, elegance, empowerment, emancipation, exception, and emotion" to assess customary functional systems and asserts that different worldviews could be analysed using a systems approach (Akrofi, 2013: xiv). The systems approach provides an in-depth understanding of

rural and peri-urban problems (Akrofi, 2013). See also Nkwae (2006); Whittal (2008); and Mabesa (2011). This research uses systems thinking to understand the influence of a mixed legal system in LASs, and way to improve it.

2.8 Analytical Framework for Customary and Statutory Land Administration Systems

De Vries and Chigbu (2017) identify some RLM principles as responsive, resilient, robust, reliable, respected, reflexive, retraceable, and recognisable (8Rs). This analytical framework is adopted over other analytical tools because its focus addresses the aim of this research (the divide between customary and statutory institutions and laws). The 8Rs are about RLM that examines structures, processes, and outcomes (*ibid*.). De Vries and Chigbu's (2017) RLM framework is used to assess and diagnose land-use planning in Ghana to ascertain whether it is responsible. RLM was also used to evaluate land tenure regularisation in Rwanda. The study in Ghana showed that all the elements of RLM are present in land-use planning except for 'respected', which is lacking in the processes; however, a more in-depth study of the situation is recommended since the project is still in its initial stage (*ibid*; see also Ameyaw *et al*. 2018). In the case of land tenure regularisation in Rwanda, a Likert scale of 1-5 (where 1 is worst and 5 is best) was adopted for each indicator for further analysis. The analysis showed that only 'recognisable' scores 5 across structures, processes, and impacts. At the same time, the other indicators vary across three assessment scores (see de Vries and Chigbu, 2017: 72). This analytical framework is yet to be used to analyse the LAS and legal framework in Nigeria. Hence this study will contribute to the knowledge of responsibleness in land management.

2.9 Summary

This chapter reviews the literature concerning LAS and legal pluralism. In SSA and elsewhere, enacting laws in the colonial era brought about formal LAS and statutory laws, with constitutional states adopting the same at independence. While a constitutional state like South Africa recognises traditional authorities with unparalleled powers in land

administration, although not following the tenet of democratic principles, several SSA states failed to recognise the roles of traditional leaders. The non-recognition of traditional leaders in the constitution may be why they are not formally recognised in LAS.

The resilience of customary land administration and customary laws in land administration was explored. The reviewed literature suggests that customary land administration survives because of the role of traditional institutions, the significance of customary norms to the pattern of land use and rights, and the way they are connected to social relations (Alden Wily, 2011). It shows that customary land administration has its mechanism to adapt to social change. Customary and statutory LAS can be integrated into a hybrid LAS (Obeng, 2018). Also, formal LASs cause tenure insecurity and uncertainty for land rightsholders. Despite land title registration of statutory LASs, disputes on land persist in SSA. Customary tenure is resilient, despite efforts to replace it with statutory tenure.

Concerning the role of legal pluralism in post-colonial Africa, this chapter has shown the nature of legal pluralism to include deep legal pluralism and weak legal pluralism at either end of a spectrum. The concept of legal pluralism is challenged by some who suggest that pluralism should mean 'same situation', 'same footing', and 'same relevance'. These opponents suggest that legal pluralism does not reflect a democratic, constitutional state. Griffiths (2004) supports legal pluralism and argues against state power over the customary law's recognition, legitimacy and validity, and the state's claim of integrity, coherence, and uniformity. Ntsebeza (2005) argues that traditional authorities in South Africa must abandon their hereditary status and subject themselves to the election process to be part of a constitutional state.

Much is yet to be done in the application of an RLM framework. However, the studies reviewed (de Vries and Chigbu, 2017; Ameyaw *et al*. 2018) have shown the effectiveness of the analytical framework in assessing the divide between customary and statutory institutions and laws in the land administration process. The next chapter examines the

theoretical framework used for analysis in this study. This theoretical framework is drawn from the domain of LAS and legal framework.

3 Theoretical Framework

3.1 Introduction

The literature on LAS and legal pluralism is reviewed in Chapter 2. This chapter discusses the different frameworks used in this research. Several theoretical frameworks have been developed and tested by LAS researchers (e.g., Barry and Roux, 2012; Barry and Augustinus, 2016; Whittal, 2008; Akrofi, 2013; Obeng, 2018). The philosophical foundations for LAS are identified as aligned with social constructivism (which is closely related to interpretivism) by Roux & Barry (2009). However, a suitable theoretical framework that addresses the legal system and the law remains unclear to researchers. The unclarity might be because of less focus on empirical research by researchers in the field of law. Empirical research involves collecting field data for analysis and interpretation (a people-oriented approach).

This research assesses LASs and legal frameworks, which entails the interface between the customary and statutory institutions and laws relating to LAS due to legal plurality in a post-colonial context. LASs are complex and encompass political, economic, and social aspects. These need to be considered in choosing a suitable theoretical framework. This chapter examines potential paradigms and finds a critical realist paradigm ideal for this study. Critical realism accommodates both elements of positivism and social constructivism (see Section 3.2.2.1 and 3.2.3).

This chapter discusses the theoretical frameworks used to aid analysis in this study. Section 3.2 presents qualitative research and the choice of worldviews because this research involves qualitative and quantitative data. Critical realism as an appropriate paradigm for this research is presented in section 3.2.4. Systems theory is explained in section 3.3 because systems theory is used to structure problems of LAS in Ekiti State. Section 3.4 discusses the idea of institutional isomorphism theory, which is relevant to this research because the study involves customary and statutory institutions. Joseph Raz's philosophy of law is presented in section 3.6, which offers a "service conception" of law that aligns with

the idea that LAS should serve society to be significant, suitable, and successful. Section 3.7 provides a summary of the chapter.

3.2 Qualitative Research and the choice of Worldviews

A qualitative approach allows for an in-depth understanding of the research problem and a detailed case description. “The meaning people have constructed, that is, how people make sense of their world and the experiences they have in the world”, are achieved using a qualitative approach (Merriam and Tisdell, 2016: 15).

3.2.1 The three worlds world views

To help deal with the complexities involved in LAS, a careful selection of the worldviews, paradigms, and theoretical frameworks is important. Our interaction and relation with the three worlds (the material, social, and personal) are aided by three world models (personal perspectives, organisational and technical), which help us to understand certain paradigms (Mingers, 2006). The three worlds model was developed by Mingers (2006) from the work of Habermas (1984). These three world models show the interactions with material, social and personal aspects, as illustrated below (see Figure **3-1**). The foundation of the model is built on western ways of thinking.

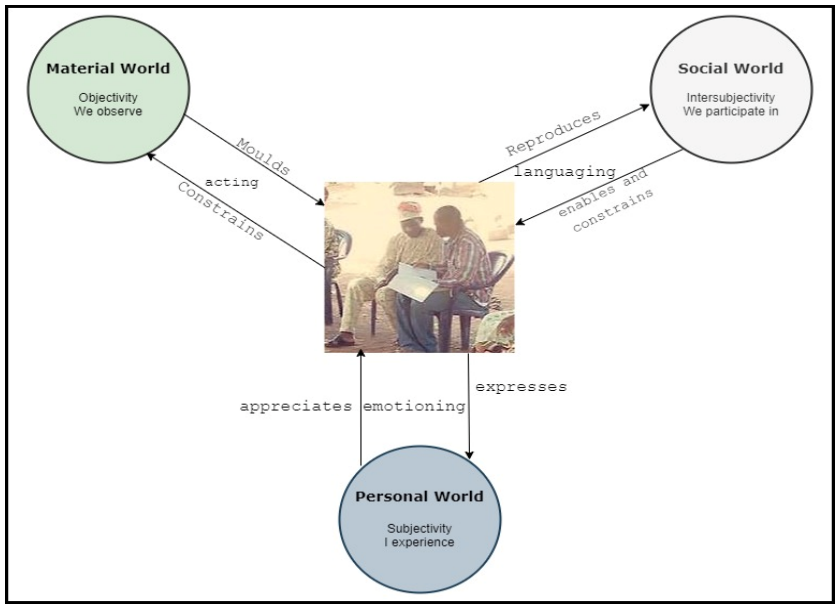

Figure 3-1. Habermas's Three Worlds Model (adapted from Mingers, 2006)

The research adopts a two worlds model for this research: the social and the material, while the personal is excluded from this study. The personal world view is excluded because of what the research refers to as research bias. The three worlds model embraces uncertainty, and the social and material worlds address objectivity and intersubjectivity, i.e., the people's observation of the process and structures, as well as participation, are analysed.

3.2.2 Choosing a paradigm for the research

A paradigm is a "set of ideas, assumptions, and beliefs that shaped and guided [the activity of a particular scientific community]" (Jackson, 2003: 37). It also refers to the researcher's epistemological, ontological and methodological approach, which helps researchers to view and shape their interaction with the world (Denzin & Lincoln, 1998). Denzin & Lincoln (1998) identify four interpretive paradigms that shape qualitative research: positivism and post-positivism, constructivist-interpretive, critical, and feminist-(post) structural (*ibid*.).

3.2.2.1 Positivist paradigm

Positivists contend that reality is real and that it can be seen, stabilized, and measured. This reality's investigation is regarded as "scientific". It encompasses the formation of "laws", and knowledge is gained through the process (Patton, 2015: 106). Positivists use quantitative research methods to test hypotheses against facts (Robson, 2002). Data validity is the concern of a positivist who attempts to provide an explanation for knowledge (Gartell and Gartell, 1996). A positivist stance is experimental and focuses on understanding the natural world, excluding the social world. This research philosophy is unsuitable on its own for this study because the social world is important to this research, being the place where human behaviour is found. This research focuses on assessing the LAS and legal framework, which includes the interaction between customary and statutory institutions and laws relating to LAS. These may be static and dynamic and involve political, economic, and social aspects. Hence positivism on its own is inadequate to address the research objectives.

3.2.2.2 Post-Positivism Paradigm

Post-positivism acknowledges that knowledge is not absolute but rather relative, but "it is possible, to use empirical evidence, to differentiate between more and less plausible claims" (Patton, 2015: 106). Post-positivism is used as a lens to help the researcher to observe and measure the objective reality that is present in the world (Creswell, 2013). Discovering laws and theories that govern the world is its emphasis. These are required to be tested and refined so that the world can be understood (Creswell, 2013). In assessing an aspect of LAS and legal framework, post-positivism could be useful.

3.2.3 Social constructivist approach

A social constructivist creates or develops a "theory or a pattern of meaning" (Creswell, 2013:8). Researchers are embedded within the research, acknowledging that their background helps shape their interpretations (Creswell, 2003; 2013). The complex world is interpreted through the views of people living in it. Understanding happens through interacting with the researcher and the respondents (Merriam & Tisdell, 2016). As a poststructuralist researcher, culture is seen to contain hidden rules that control the behaviours of its practitioners, knowingly or unknowingly (*ibid*). Sociological, psychological, and linguistic structures help shape the individual's view of the world over which they have little or no control (Jones, 1998). Sources such as the Constitution, laws, and policies will not provide information on the subjective views of the participants. The subjective views are essential data for this study; hence a social constructivist approach is necessary. However, it cannot be used in isolation since the world of facts and process (as can be sensed using a positivist approach) is equally important.

3.2.4 Critical realism

A basic problem of a critical realist approach to science is explanation in terms of separate underlying causal mechanisms that could lead to a principle that is not observable (Mingers, 2006: 24). Whittal (2008) states that critical realism allows the reality of the world to be

acknowledged while accepting that knowledge of the world is socially and historically influenced. Although the complete independence of the observer is eschewed, they are allowed to consider context, meaning, and purpose essential in understanding the psychological and social dimensions of problems (*ibid*). The aim of the ontology of the critical realist is functionalist in approach. The functionalist perspective of critical realists sees the paradigm in terms of its components as a whole, notably positivism, social constructivism, and critical realism. Selecting one or more constituent part(s) helps to understand the real-world problem (Jackson, 2003).

Knowledge in critical realism is conceived in three graded areas: the empirical, the actual, and the real (Collier, 1994). One's experiences are used in the empirical domain, and events produced and reproduced by human structures are explained in the actual domain, while the processes of social structures in producing and reproducing events are described in the real domain (Marsh and Furlong, 2002; Bhaskar and Callinicos, 2007; Obeng, 2018). In critical realism, subjectivity and objectivity are balanced to some extent while using qualitative and quantitative methods (Obeng, 2018). Whittal (2008) states that human interpretations of reality should be critiqued to confirm that truth is appraised as best as it is possible. Whittal (2008: 90) says that "it is a pluralist approach and an alternative to the traditional dualism of positivism versus interpretivism." Despite the pluralist approach, critical realism has been widely criticised. Jackson (2006) argues that because positivism and interpretivism are incompatible, it is impossible to combine the two. Recent study has however demonstrated that positivism and interpretivism can be used in LAS research. (Whittal, 2008; Akrofi, 2013; Obeng, 2018; Hull, 2019).

The following reasons are considered for using critical realism in LAS research:

- the basis for customary land tenure, administration, and laws are rooted in the local people's norms, customs, and cultural values (Chike, 2006);

- complexity exists in the study of the human-land relationship, indicating that both qualitative and quantitative approaches are essential for their analysis (Creswell, 2009).

From the preceding, the reasons for adopting critical realism in this research are as follows:

- a single paradigm is not sufficient (positivism alone is insufficient) to understand uncertainty in LAS in the post-colonial context concerning social, political, and economic aspects;
- interactions in LAS need to be understood in the local context (social constructivism has value);
- access to customary and statutory institutions needs to be examined, which requires a pluralistic approach (critical realism is robust in this regard).

The ontology of critical realism adopts a post-positivist viewpoint. The perspective of critical realism is "multi-paradigmatic", meaning that the researcher can adopt elements of various paradigms that are suitable for the research (Mingers, 2006). A critical realist ontology was adopted by Whittal (2008), Akrofi (2013), Obeng (2018) and Hull (2019). Akrofi also adopted a post-positivist paradigm in his customary land administration study. Hull (2019) used a post-positivist paradigm using critical realist ontology for analysing cadastral development from the lenses of human rights, good governance, and a pro-poor approach. The subject of this study is LASLF in their post-colonial context. Critical realism allows the researcher to adopt a multi-paradigmatic approach (Hull, 2019). Hence the researcher adopted a post-positivist paradigm, using critical realist ontology deemed suitable for this research study. The research dimension is multi-disciplinary, standing at the intersection of geomatics, social sciences, and land law, enabling the researcher to select a theoretical framework from multiple disciplines.

3.3 Systems Theory

3.3.1 Introduction

System theory was developed to help researchers think critically about any system's aims and the wherewithal for achieving them (von Bertalanffy, 1969). A system can be a combination of parts or atoms interacting to function together (Kauffman, 1980). Checkland (1999: 10) understands the term "system" to be a "label for something taken to exist in the world outside ourselves". For example, a car's engine has many parts assembled to function as one. When the elements are separated, they may be able to perform but only with the functions of the component, not as a whole. But when the parts are put together, they function as a whole system. The functioning as an entire system accords with the notion that 'the whole is more than the sum of its parts'. A system is further explained as a coherent whole defined by an entity in which the surrounding boundary is perceived to distinguish internal and external elements as well as to recognise the input into and output coming from entity (Ng, Maull and Yip, 2009; Mele, Pels and Polese, 2010).

A theory predicts or explains an occurrence by describing the relationship between concepts (Ngulube, 2018). Several other definitions of theories show the "plausible relationship produced from concepts and set of concepts", and these definitions emphasise these aspects of theories (Strauss & Corbin, 1994: 278). Systems theory adopts the principles of understanding the system by examining the components of a system with each other rather than in isolation (Wilkinson, 2011). It is an interdisciplinary theory that holistically investigates a phenomenon (Capra, 1996). The multidisciplinary approach makes system theory suitable for this research because this research stands at the intersection of geomatics, social sciences, and land law.

Systems theory makes it possible to describe and analyse a collection of elements that together form a whole and yield certain outcomes (Çağdaş and Stubkjær, 2011: 82). It is used to analyse and explain a phenomenon (Barry and Fourie, 2002; Zevenbergen, 2002;

Mabesa, 2011; Akrofi, 2013). For instance, Barry and Fourie (2002) developed a conceptual framework using systems theory to analyse cadastral systems in uncertain situations. Zevenbergen (2002) used the systems thinking approach to examine land registration, focusing on technical, legal, and organisation aspects and addressing socio-cultural and financial-economical aspects of land registration systems. Mabesa (2011) provided an in-depth understanding of LASs in Lesotho using systems theory. She investigated two systems: the Land Surveys and Physical Planning (LSPP) and the Land Administration Authority (LAA). Using SSM, Akrofi (2013) depicted a systems model of customary land management in patrilineal and matrilineal systems in Ghana

One of the notable writers of systems theory is Checkland, who refers to systems theory as "system thinking" (Checkland, 1999). Researchers in the cadastral domain use system theory as a framework, i.e., system thinking, which states that a problem or phenomenon should be defined in terms of a complex whole (Çağdaş & Stubkjær, 2011). Although the elements of the whole can be analysed individually, the whole should be the focus of the analysis (*ibid*). This method adopts a holistic viewpoint by looking at the system as a whole and considering how its many components interact with one another (Checkland, 1999).

System thinking can be separated into hard and soft systems thinking (Checkland & Scholes, 1990). The latter was developed by the modelling of intricate human activity processes (like LAS), whereas the former was developed through engineering to find answers to complex technical issues (Nidumolu *et al*. 2006). In this thesis, I focus on soft systems thinking.

3.3.2 Soft systems thinking

Soft systems thinking was developed to address the shortcomings of hard systems thinking and could be referred to as a theory of design and action (Gregor, 2002; Çağdaş & Stubkjær, 2011) in solving unstructured problems within the area of human activity systems (Çağdaş and Stubkjær, 2011). Soft systems thinking assumes that peoples' different perceptions are affected by the problem and should be included in the system definition of a problem (*ibid*).

Consequently, soft systems thinking enables researchers to engage people in debate and discussion with the intent to accommodate different perspectives and reach some sort of agreement as regards the problem situation and possible solution (Dahlbom & Mathiassen, 1993; Nkwae, 2006). The two central issues in the problem situation are the 'what' and 'how' of the system (Avison and Fitgerald, 1995).

The world is complex but can be investigated using systems models (Checkland & Holwell, 1998). Soft systems thinkers use the 'holon' as an epistemological device to explain why different interpretations of the problem exist (Checkland and Scholes, 1990). The paradigm of learning is adopted over optimisation with system ideas used as a means of inquiry (Checkland and Scholes, 1990). Nkwae (2006) asserts that when faced with fresh experiences, challenges, issues, and learning in the actual world, the world's systems may be changed to enhance the situation.

Soft systems thinking encourages an iterative process of examining a situation from several perspectives as well as enabling collaboration in solving complex problems (Çağdaş & Stubkjær, 2011). Soft systems thinking considers human behaviour and views while also accommodating an understanding of the environment as a system that includes social, cultural, and economic elements (*ibid*). Social problems and organisations are changing entities considered complex by soft systems thinking in which the people in it continually redefine their nature (Nkwae, 2006).

Drawing from the explanation of soft systems thinking approaches in the preceding section, it is evident that the soft systems thinking approach is appropriate in addressing peri-urban land situations. The peri-urban problem situation is complex and unstructured. Soft systems thinking is a helpful approach to managing complex, unstructured problems and conducting interdisciplinary research (Churchman, 1971, cited in Nkwae, 2006). Due to the complexity and lack of structure of peri-urban land problems, soft-systens thinking provides a valuable framework for understanding the effects of the mixed legal system in

the land administration process in peri-urban areas. It embraces multi-level views, hierarchies, stakeholders, and variable perspectives (Nkwae, 2006). Soft systems thinking also provides the methodology to examine and analyse the processes and structures of customary and statutory institutions in the LAS.

3.3.3 Soft systems methodology

Checkland (1999) identified soft systems methodology (SSM) as helpful in solving problems in a system. SSM "is a methodology, setting out principles for the use of methods, which enables intervention in ill-structured problem situations where relationship maintaining is at least as important as goal-seeking and answering questions" (Jackson, 2003). SSM is based on soft system theory, which complements conventional reductionist scientific inquiry (Checkland, 1976). It is suitable for studying a phenomenon by reducing it into smaller and smaller components (*ibid*). System theory attempts to take a holistic view of the interrelations of the parts (Nkwae, 2006).

There are four stages in the process of SSM (Checkland and Scholes, 1990):

- "Finding out about a problem situation, which includes the cultural and political dynamic of the situation.
- Building conceptual activity models of the various systems to structure an exploration of the problem situation.
- Evaluating conceptual models by comparing the models to the real situation and using the comparison to define desirable, feasible changes that would improve the situation.
- Taking action to improve the problem situation."

SSM is appropriate for evaluating complex land problems involving land tenure, land use, land valuation, and land development in peri-urban areas (Barry and Fourie, 2002; Nkwae, 2006). It is based on qualitative issues and uses a participatory approach (Nkwae, 2006). Its

philosophical stance is interpretive and evaluative. Modelling complex peri-urban land problems is possible due to their systemic nature.

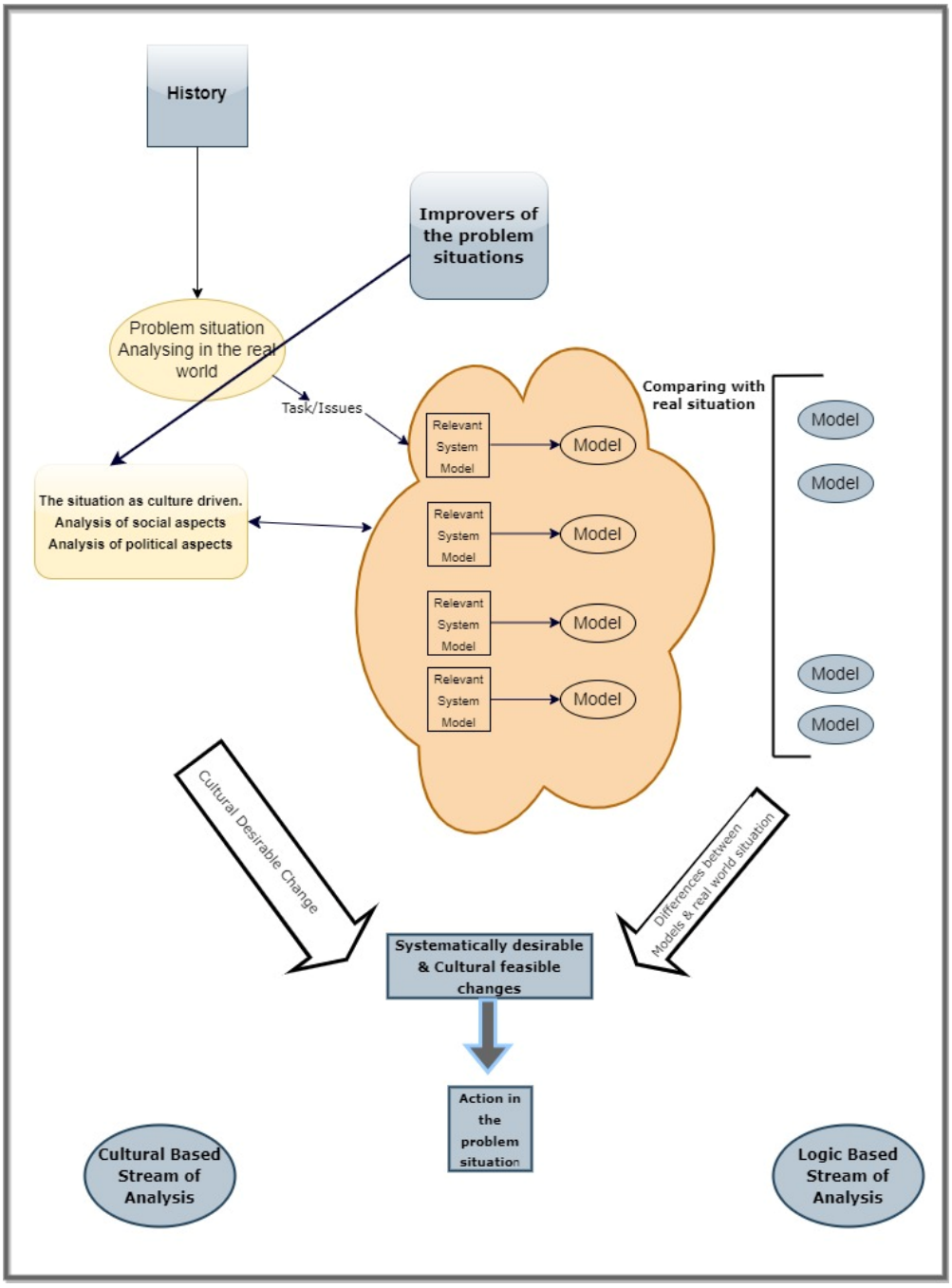

Figure 3-2. Two Stream of Analysis in SSM (Reid et al. 1999: 10).

The SSM has evolved from a seven-stage cyclic learning system to two streams-based analysis systems (Checkland and Scholes, 1990): the cultural analysis stream and the logic-based analysis stream (see Figure 3-2). SSM has four main tools: rich pictures, root definitions, conceptual models, and comparison (Jackson, 2003). The cultural stream of

analysis is assisted with the rich pictures, while the root definitions and conceptual models help with the logic-based stream of analysis (*ibid*). The 'comparison' provides the link between the cultural stream of analysis and the logic-based stream of analysis.

The rich picture illustrates the problem and its several units and interactions in a creative drawing from a specific perception (Whittal, 2008). It is depicted using an individual's subjective view in cognitive, mind mapping, or journey making (Mingers, 2006; Whittal, 2008). Mingers (2006) states that when multiple perspectives are used to produce a map, the map is understood to be more relevant to reality and real-world research. The problem situation is a rich picture to gain and disseminate a creative understanding (Jackson, 2003). The rich picture is a technique that assists with the logic-based stream of analysis by enabling the selection of relevant systems needed for analysis (*ibid*). Suitable systems need to offer insight into the problem situation and suggest ways for improvement (Jackson, 2003). Relevant systems provide access to the logic-based stream of analysis' rigour (*ibid*).

Root definitions are used to ensure that investigation of a problem situation is thorough and holistic using two forms: "primary task and issue-based" definitions (Jackson, 2003: 194). The primary task root definition is used to itemise tasks in the organisation, which leads to developing models that map existing organisational structures (Jackson, 2003). Issue-based root definitions pertain to contemporary issues of concern, such as the need for greater innovation or to settle contentious situations that transgress predetermined bounds (*ibid.*). The root definition has six elements depicted in the mnemonic CATWOE (Jackson, 2003: 194):

"C 'customers'- the beneficiaries or victims of the transformation process;

A 'actors' – those who would undertake the transformation process;

T 'transformation' – the conversion of input to output;

W 'world view' – the world view that makes this transformation meaningful;

O ‘owners’ – those who could stop the change;

E ‘environmental constraints’ – elements outside the system are taken as given.”

A conceptual model is built after the root definition is satisfactorily formulated, including purposeful ‘holons’ to address the problem situation and any necessary changes (Jackson, 2003). The conceptual model represents the activities required at a particular level of detail or resolution (Wilson, 1984). Finally, a comparison is made between the conceptual models and what is perceived to exist in the real world as expressed in rich pictures (Jackson, 2003). Jackson states that SSM is interpretive as it deals only with ideas (root definitions) and concepts (conceptual models).

3.4 Institutional Isomorphism Theory

In the analysis of social phenomena, institutional isomorphism theory is gaining ground as a strong and well-liked analytical technique for examining organisational development and behaviour (Seyfried, Ansmann and Pohlenz, 2019; Alvesson, Hallett, and Spicer, 2019; Munir, 2020). The institutional isomorphism theory views the social world as comprising of institutions. Institutions have been defined in multiple ways (Lammers and Barbour, 2006; Greenwood *et al*. 2008). The concept of institutions used in this study, provided by Lammers and Barbour (2006), is constellations of established practices driven by lasting, formalised, rational ideas that transcend organisations and circumstances. This definition describes the essential characteristics that researchers used to develop institutional theory. The characteristics are:

- Institutions are a social phenomenon that persists;
- beyond strict functional requirements, institutions adopt a life of their own that has social meaning;
- institutions organise social life across and through organisations;
- the presence of institutions can be seen in a variety of social phenomena, including “cultural-cognitive, normative, and regulative elements”;

- Institutions, being sophisticated, adopt a "more-or-less taken-for-granted repetitive social behaviour(s) that [are] underpinned by normative systems and cognitive understandings that give meaning to social exchange and thus enable self-reproducing social order" (Greenwood *et al*. 2008: 5).
- institutions exhibit a logical goal that directs behaviours towards certain ends.

In organisational research, the institutional theory is one of the main approaches adopted by researchers (David and Bitektine, 2009). Researchers' perspectives diverge on fundamental ideas and underlying presumptions of how social norms and expectations shape organizations. For instance, Some people use the term "institution" to refer to organisational behaviour (Meyer and Rowan, 1977), while others (Selznick, 1949) use it to refer to the entire organisation or to the norms and values that are typical of a certain sector of society (Friedland and Alford, 1991). Despite the different views of scholars, the institutional framework has been employed by researchers across various disciplines.

Institutions are comprised of regulative, normative, and cultural-cognitive elements (see Table 3-1) that provide "stability and meaning to social life" (Scott, 2012: 220). Scott (*ibid.*) describes the characteristics of institutions as "multifaceted, durable social structures made up of symbolic elements, social activities, and material resources. Institutions exhibit these characteristics because of the processes set in motion by regulative, normative, and cultural-cognitive elements." (Scott, 2001: 49). Institutional structures are built by these elements providing a solid foundation that guides behaviour and defies change (*ibid*.). Some social theorist researchers identify regulative, normative, and cultural-cognitive elements as vital ingredients of institutions asserting that the three elements form a continuum moving "from the conscious to the unconscious, from the legally enforced to the taken-for-granted" (Hoffman, 1997: 36).

DiMaggio and Powell (2012) make the case for institutional isomorphism as a way to explain organisational development and adaptability. The theory was based on the idea of

institutional forces causing homogenisation and convergence. This explanation led to the adoption of institutional isomorphism as a theoretical approach that explains how organisations operate within multiple organisational and institutional environments (Rhoades and Sporn, 2002). DiMaggio and Powell (2012) agree that competition or the need for efficiency is not the driver for organisational change. Three mechanisms that result in institutional convergence are identified as coercive, mimetic, and normative isomorphism (DiMaggio and Powell, 2012).

Table 3-1 summarises the three elements of institutions, wherein the rows define some of the principal dimensions. The columns distinguish each of the elements. Coercive and mimetic isomorphism are adopted because they relate to institutions' regulative and cultural-cognitive pillars. From the characteristics of three elements of institutions, this study adopts the mechanism of logic indicators and the basis of legitimacy (see Table 3-1).

Table 3-1. Three elements of institutions (adapted after Scott, 2012: 223)

	Regulative	**Normative**	**Cultural-cognitive**
Basis of compliance	Experience	Social obligation	Taken-for-grantedness Shared understanding
Basis of order	Regulative rules	Binding expectations	Constitutive schema
Mechanisms of **Logic** **Indicators**	Coercive Instrumentality Rules Laws sanctions	Normative Appropriateness Certification Accreditation	Mimetic Orthodoxy Common beliefs Shared logics of action
Affect	Fear guilt/innocence	Shame/honour	Isomorphism Certainty/confusion
Basis of legitimacy	Legally sanctioned	Morally governed	Comprehensible Recognizable Culturally supported

3.4.1 Coercive isomorphism

Coercive isomorphism emanates from outside an organisation’s legal and social environments combined with political control through laws and regulations (DiMaggio and

Powell, 2012). Expectations and pressure are created for organisations to regulate organisational structure and procedures immediately after laws are enacted. Because of this type of isomorphism, organisations may face both formal and informal pressure from other organisations. They depend on the cultural expectation in the society within which the community survives (*ibid.*). These pressures can be force, persuasion, or an invitation to join the collaboration, leading to organisational changes. A typical legal environment affects an organisation's behaviour and structure (*ibid.*). Babalola and Hull (2019a) show the impact of conflicting, contradicting, and complex land policy systems that require the necessary organisational controls to adhere to legal commitments in the land policy. Organisations are also shaped by the legal and technical requirements of the state (DiMaggio and Powell, 2012).

Difficulties may be eliminated and should be provided using the greater power of the more extensive social system. Two distinguishing characteristics of the political environment are that political decision-makers frequently do not directly experience the results of their decisions, and political decisions are applied uniformly to all classes of organisations, which reduces the adaptability and flexibility of decisions (DiMaggio and Powell, 2012).

Meyer and Rowan (1977) argue that rationalising state and large organisations exercise dominance on social life with organisational structures reflecting rules and authority legitimised by and within and outside the state. This situation results in homogenisation within the given field, with organisations that are becoming more homogeneous within specific fields and more structured around institutional compliance rituals (DiMaggio and Powell, 2012).

3.4.2 Mimetic isomorphism

Mimetic isomorphism results from organisational uncertainties and ambiguity. When a problem arises in the organisation, the techniques to solve it are often unclear. A reasonable strategy is employed to study how "comparable organisations" address challenges

(Seyfried, Ansmann and Pohlenz, 2019: 118). In such instances, organisations may copy solutions without adequate reflection. Organisations are modelled on other organisations when their goals are ambiguous and when the environment creates "symbolic uncertainty" (DiMaggio and Powell, 2012: 57). Modelling in this context refers to the response to uncertainty (DiMaggio and Powell, 2012). The modelled organisation can be unaware of the modelling or may not have the intention to be copied. For instance, the continuance of the British court system after independence without considering the suitability of this court system to the local context in Nigeria can be referred to as an instance of modelling. Nigerian judiciary is now implementing their perception of the British model to cope with land administration problems. When an organisation is perceived to be legitimate or successful in the same field, another organisation can model itself after such an organisation.

In this study, the processes of isomorphism in the measurement of tenure security are examined. The customary and statutory institutions in the land administration process will be used in this assessment. Institutional isomorphism theory is used to unmask the face of the institutions in the land administration process using coercive and mimetic isomorphism in Chapter 7.

3.5 Elements of Institutions

3.5.1 Regulative element of the institution

Scholars view institutions as resting on regulatory pillars of rules setting, monitoring, and sanctioning activities (North, 1990; Scott, 2012). Regulatory processes require the ability to create rules, assess how others adhere to them, and, when necessary, take action that will have an impact on future behaviour (Scott, 2012). The formal and informal mechanisms may be used to operate these processes. The formal mechanism may include courts and ministries, government agencies as actors, or informal mechanisms involving 'folkways' such as shaming or shunning activities (*ibid*). Economists and political scientists view individuals and organisations that construct rules systems or conform to rules to pursue

their self-interest as acting instrumentally and reasonably (Scott, 2012). As per DiMaggio and Powell's typology (2012), the primary mechanism of control employed by the institution is coercion (see Sections 3.4.1; 3.5.3.3).

The regulatory pillar's key components are force, punishment, and expedience responses. These components are usually alleviated by the existence of rules which can be informal mores (customs) or formal rules and laws. Coercive functions of law and normative and cognitive dimensions are pointed out by law and society theorists that analysts should not conflate roles of law. Many laws are conflicting and contradictory because they do not produce clear rules of conduct. In such a situation, laws are conceived as sense-making using joint interpretation based on more cognitive and normative, rather than coercive, components for their effect (Scott, 2012; see also Suchman and Edelman, 1997).

3.5.2 The cultural-cognitive element of the institution

The two central elements of institutions are common notions that comprise the social reality and the meaning derived from social fact (Scott, 2012). The symbols, words, signs, and gestures ascribed to things and actions form their meanings (Scott, 2008). Interactions result in maintained and transformed meanings to make sense of the ongoing stream of happenings. As per Berger and Kellner (1981: 31), "every human institution is, as it were, a sedimentation of meanings or, to vary the image, a crystallisation of meanings in the objective form." Institutional cognitive-cultural components are utilised to identify internal interpretive processes influenced by the external cultural framework (Scott, 2012). A more embedded cultural form is referred to when describing the cognitive-cultural elements of the institutions. Culture "congeals" in states that require less upkeep, ritual reinforcement, and symbolic development than the more subtle spheres we typically think of as cultural (Jepperson and Swidler, 1994). In conceptualising institutions along cultural-cognitive lines, the role of the social construct of meaning is stressed (Scott, 2012).

More than technical knowledge and material resources, organisations need social acceptability and credibility to survive in a social environment (Scott *et al*. 2000). These circumstances are referenced by the idea of legitimacy (Scott, 2012). See section 3.5.3 for the discussion on legitimacy.

3.5.3 Regulative, normative, cultural-cognitive elements of institutions, and legitimacy

Suchman (1995) defined legitimacy as the belief that an entity's behaviours fall within some set of socially constructed standards, values, beliefs, and definitions and are hence acceptable, proper, or appropriate. Legitimacy is "generalised" rather than an "event-specific" evaluation (Scott, 2012: 230) and is "possessed objectively, yet created subjectively" (Suchman, 1995: 574). This research adopts Suchman's definition of legitimacy because it includes both the evaluative and cognitive dimensions of legitimacy, making it an inclusive, broad-based definition. Also, the definition accepts the role of the social actors in the legitimisation process.

Legitimacy is treated as an institutional resource extracted from the institutional environment in an organisation's resource-dependent or social-exchange approach (Scott, 2012). Nevertheless, from an institutional point of view, legitimacy cannot be purchased or exchanged. Still, instead, it is a situation showing apparent adherence to applicable rules and laws, normative backing, or congruence with cultural-cognitive frameworks (*ibid.*). Also, unlike material resources and technical information, legitimacy is not used as input for transformation to obtain a changed or new output. Still, it is a symbolic value that should be shown in a way that is observant to an outsider (Scott, 2003). Supporting the cultural-cognitive dimension, Meyer and Scott (1983b) emphasise that the level of cultural acceptance of an organisation is referred to as its organisational legitimacy.

Legitimacy has horizontal and vertical dimensions, where cultural support is the vertical dimension and regulative and normative support is the horizontal dimension. Cultural

support entails the support of different authorities: cultural and political authorities are used to bestow legitimacy. The agents of customary and statutory institutions confer this legitimacy in land administration processes. For instance, in the customary legal framework, the community head is critical to conferring legitimacy, while in the statutory legal framework, the agents of state are used to confer legitimacy. Competing authorities may exist in a complex situation (Scott, 2012), which may negatively affect an organisation's legitimacy (Meyer and Scott, 1983a).

As per an institution's regulative, normative, and cultural-cognitive pillars, different forms of legitimacy are exhibited. Regulatory clarifies conformity to rules. The establishment and operation of an organisation must conform to rules and relevant legal and quasi-legal requirements before legitimacy can be conferred (Scott, 2012). Normatively, legitimacy is assessed in a deeper, moral base which is more likely to be internalised than the regulatory controls (Scott, 2012). Hence incentives for conformity include 'intrinsic' and 'extrinsic' rewards. "The cultural-cognitive mode is the 'deepest' level because it rests on preconscious, taken-for-granted understanding" (*ibid*: 231).

In summary, the basis for legitimacy for the three pillars are different and, sometimes, in conflict (Scott, 2012). A regulative view relates to ascertaining if an organisation or institution is legally established or operating according to relevant laws and regulations. In a normative stance, emphasising moral obligations may result in actions deviating from "mere" legal requirements (Scott, 2012). The research adopts regulative and cultural-cognitive approaches as a lens for analysis in Chapter 7, considering these differences.

3.5.3.1 Managing legitimacy

Studies on Strategic and institutional legitimacy are separated into two groups. Strategic legitimacy emphasises how an "evocative symbol" is used to "garner society support" (Suchman, 2012: 4). Institutional legitimacy emphasises how "sector-wide structuration dynamics generate cultural pressures that transcend any single organisation's purpose"

(*ibid*). Both groups are further subdivided: "legitimacy grounded in a pragmatic assessment of stakeholder relations, legitimacy grounded in normative evaluations of moral propriety, and legitimacy grounded in cognitive definitions of appropriateness and interpretability" (Aldrich and Fiol, 1994 cited in Suchman, 1995: 4); see Figure 3-3). This research pursues institutional legitimacy because legitimacy is perceived as a set of constitutive beliefs (Suchman, 1988). However, the difference between strategic and institutional approaches emanates from researchers' perspectives. From the viewpoint of strategic theorists, organisational managers are looking 'out' while the institutional theorist adopts the stance of the society looking 'in' (Elsbach, 1994). Institutional legitimacy empowers organisations to make them seem natural and meaningful (Suchman, 1995).

Three broad types of legitimacy and their corresponding subtypes exist, as shown in Figure 3-3: pragmatic, moral, and cognitive. It is suggested that organisations generally perceive their operations as desirable, proper, or appropriate within a set of socially formed norms, values, beliefs, and definitions (Suchman, 1995). Different behavioural dynamics are exhibited by these categories of legitimacy (*ibid.*).

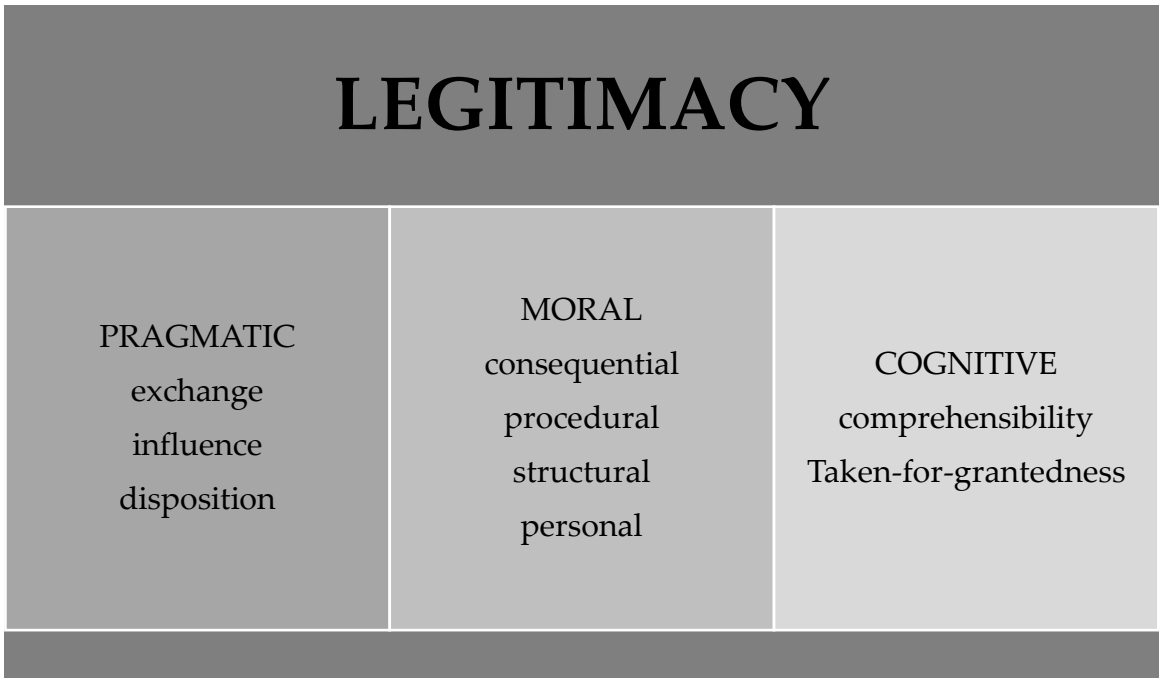

Figure 3-3. Types and Subtypes of Legitimacy

3.5.3.2 Gaining legitimacy

The topic of gaining legitimacy may be separated into three 'efforts': in the organisation environment, efforts are made to conform to the dictates of pre-existing audiences; in the selection from multiple domains, steps are made to select an audience that will support current practices, and new audience and new legitimating beliefs are created with the efforts to manipulate environmental structure (Suchman, 2012: 19). The three 'efforts' require complex mixtures of organisational change and effective organisational communication (*ibid.*). Nevertheless, they fall on a continuum from passive conformity to comparatively active manipulation (Oliver, 1991).

In conforming to the environments, managers pursuing legitimacy decide to position their organisation within an existing institution. The nature of conformism differs depending on whether the legitimacy pursued is pragmatic, moral, or cognitive. Using conformity to attain pragmatic legitimacy, the organisation either meets the substantive needs of society or offers decision-making access, or both (Suchman, 2012). In pursuit of moral legitimacy, an organisation may pursue conformist stances by conforming to ethical ideas and not merely instrumental demands *(ibid*). Conformity to instrumental needs results in gaining pragmatic legitimacy while working to altruistic ideals results in gaining moral legitimacy. Also, conforming to established models or standards gains cognitive legitimacy (Suchman, 2012). In the same vein, mimetic isomorphism is used by an organisation in a situation of uncertainty. Pursuing comprehensibility and 'taken-for-grantedness' is done by mimicking the most protuberant and protected entities in the field (DiMaggio and Powell, 2012; see section 3.4.2 for mimetic isomorphism). Formalisation is used to gain cognitive legitimacy by codifying informal procedures and bringing them under official control (Zucker, 1991: 86). Professionalisation is pursued by an organisation using activities defined by authority and competence (Scott, 1991).

Selecting among environments to gain legitimacy, institutions must avoid conformity with others and adopt more proactive strategies (Suchman, 2012). This approach can also include pragmatic, moral, and cognitive legitimacy. In the pragmatic sense, selecting a desirable environment is an issue of market research (*ibid.*). Moral legitimacy depicts more generalised cultural concerns. Moral criteria can include efficiency, accountability, confidentiality, reliability, and responsiveness. Reliability and responsiveness are part of the 8Rs of RLM (de Vries and Chigbu, 2017) – see Section 2.4. Cognitive legitimisation involves "levels down, undercutting, gatekeeping and reducing the authority of even the most sectoral actors" (Meyer and Scott, 1983b cited in Suchman, 1995: 22). Organisations employ segregation and integration techniques to be able to operate in an incoherent environment (Suchman, 2012). Three segregation techniques are identified: "exalting ceremony while ignoring performance; displaying cynicism and openly acknowledging that entrenched rituals serve no purpose; and promising reform, thereby segregating today's reality from tomorrow's ideal." (*ibid.*: 22).

Manipulating environments to gain legitimacy goes beyond choosing between prevailing cultural beliefs; it must also disseminate different descriptions of social reality (Aldrich and Fiol, 1994). Comparing it to environment selection or compliance, this sort of social manipulation is much less understandable, less widespread, and less manageable (Ashforth and Gibbs, 1990 cited in Suchman, 2012). The most accessible form of legitimacy to manipulate is pragmatic because it reproduces direct exchange and influences relations between institutions and specific audiences (Suchman, 2012). *Popularisation* and *standardisation* are the forms of collective action that result in the cognitive realm. Standardisation encourages taken-for-grantedness by fostering isomorphism, whereas popularisation improves comprehensibility by explicating new cultural formulations (Aldrich and Fiol, 1994).

3.5.3.3 Maintaining legitimacy

Two strategies are used to maintain legitimacy: perceiving future challenges and protecting past achievements (Suchman, 2012). To maintain legitimacy, the organisation should enhance its ability to identify people's responses and anticipate emergent challenges (*ibid*). Decision-makers within an organisation may believe that a problem "does not exist or is not serious" (Hinings and Greenwood, 1988: 16). Also, protecting accomplishments helps to maintain legitimacy by enhancing organisation security, converting legitimacy from episodic to continual forms. The task of conversion entails (Suchman, 1995: 27):

- "policing internal operations to prevent miscues;
- curtailing evident legitimation efforts in favour of more subtle techniques; and
- developing a defensive stockpile of supportive beliefs, attitudes, and accounts."

In a pragmatic sense, exchanges should not only meet the constituents' needs but also remove uncertainties and promote constituent control. In the moral state, activities should embody responsibility, not impropriety, but also downplay the role of purely instrumental or consequential concerns. On a cognitive level, accounts should be simple enough to explain organisational behaviour and make it seem natural and inevitable.

3.6 Raz's Theory of Law and the Legal System

Raz's legal theory addresses the theory of law and the legal system (Raz, 1980). Raz identifies three aspects of the nature of law upon which a legal system is based: normative, institutionalised, and coercive (*ibid*.). Its normative nature deals with the aim of the legal system to guide human behaviour. Its institutionalised nature relates to the fact that institutions enforce, modify, and regularise laws. Coercive nature relates to the fact that force is used to promote obedience to the law (Raz, 1980: 2). Raz (1971: 975) states that a law must have its roots in a legal system. Examples are the American and French, and indigenous legal systems. The concept of law is understood through the theory of legal systems (Gebeye, 2017a). In formulating a complete theory of legal systems, Raz (1980: 1-2) devised four questions:

- "The problem of existence: What are the criteria for the existence of a legal system?
- The problem of identity: What criteria determine the system to which a given law belongs?
- The problem of structure: Is there a structure common to all legal systems or certain types of the legal system?
- The problem of content: Are there any laws which recur in all legal systems or types of systems?"

The first two of the problems stated above must be solved in defining a theory of legal systems, while the last two problems are not required since the structure and shared content is not common to every legal system. Two tests were applied to address the existence problem: the preliminary test and the test of exclusion (Raz, 1980). The preliminary test is a measure of the legal system's overall effectiveness (*ibid*.). More than one legal system may exist in society if they are effective. The exclusion test becomes relevant when more than one legal system is effective in society. The legal system must be mutually exclusive to apply the test of exclusion (Raz, 1980). For example, states' legal systems are mutually exclusive. Using existence and identity, Raz states that multiple legal systems exist, such as indigenous, state, and religious. This assertion implies that there are non-state laws and non-state legal procedures. With Raz's analysis, the concept of law and the legal system is liberated from the theory of the state (Hart, 1994).

The presence of pre-colonial legal systems and pre-colonial laws is identified in Africa with the help of Raz's legal theory. Applying the theory is the idea of custom in pre-colonial Africa, which represents the normative (as it controls human behaviours), institutional (as traditional institutions or similar pre-colonial institutions are saddled with the responsibility of enforcing, modifying, and normalising customs), and coercive (as there is punishment for disobedience to customs) aspects of the legal system (Elias, 1956; Bennett, 2004). The three features identified by Raz are fulfilled by customs. But a custom is not

enough unless it is part of an indigenous system, which is the main requirement for custom to exist.

At the inception of colonialism in Africa, from 1600, there was a 'classic' expression of legal dualism. The European colonisation of Africa imposed a legal system on these regions (Gates and Appiah, 2010). Common law (English), civil law (French), Roman-Dutch law, and Spanish law, among others, were imported and understood by colonists as 'superior' legal systems to those existing in Africa, largely unrecognised. The question is whether the imposed legal system ended the indigenous legal systems concerning LAS. Answering this question is fundamental to understanding the system of land laws and land policy in Africa.

3.7 Summary

In this chapter, I have discussed the theoretical frameworks used in analysing customary and statutory institutions and legal systems in the land administration process. The chapter further explored the theoretical frameworks transcending social sciences, engineering sciences and law. This study justifies that a positivist paradigm is appropriate for research examining the natural world, while others are suitable for the social world with specificity. A critical realist approach is adopted as it allows the combination of social and natural world paradigms since each cannot be used alone for this research.

This chapter has given insight into system theory, institutional isomorphism theory, and Joseph Raz's theory of legal system and adopting soft systems thinking as a lens to examine the impact of the hybrid legal system in the land administration process. The use of this multidisciplinary theory in this research is yet to be used in the domain of geomatics and in Nigeria. Hence the use of these theories contribute to knowledge in the domain of geomatics. The corresponding SSM was introduced. SSM is used as a model to develop case study narratives for the customary and statutory institutions in Chapter 7. Institutional isomorphism theory has been widely used for analysing organisational change and behaviour. The approach identifies the regulative, normative, and cultural-cognitive pillars

of institutions. This study adopts regulative and cultural-cognitive elements over the normative elements simply because the study examines customary and statutory institutions which are legally sanctioned and culturally supported (see Scott, 2012).

These elements help to provide stability and meaning to social life. Coercive, mimetic, and normative isomorphism are identified as mechanisms of institutional convergence (DiMaggio & Powell 2012). Coercive and mimetic isomorphism mechanisms are adopted because both relate to institutions' regulative and cultural cognitive elements. In the next chapter, the research methodology and design of the study are discussed.

4 Research Design and Methodology

4.1 Introduction

In this study, I provide an understanding of the effects of a mixed legal system on LAS in peri-urban areas of Southwest Nigeria. LASs and legal pluralism were introduced in Chapter 2. This investigation aims to examine whether the hybrid LAS/legal pluralism in the case study area contributes to tenure insecurity. It is necessary to understand the cases of customary and statutory legal frameworks for land administration, the LAS, and the roles of traditional institutions in land administration, within the case study area. The unit of analysis is customary and statutory legal frameworks and LASs as discussed in section 4.2.1. A mixed methods approach was adopted to achieve this, the rationale for which is explained in section 4.3.

This chapter presents the methodology and methods used to collect data and analyse the results. Section 4.2 explains the characteristics of qualitative research and the justification for adopting a case study design. Issues of validity and the suitability of a case study design to achieve the study objectives are discussed. In addition, the unit of analysis, a core component of case study design, is presented (Merriam and Tisdell, 2016). Mixed methods design is explained in section 4.3. Qualitative data collection techniques and analytical tools used in obtaining the case study evidence are described in section 4.4. Section 4.5 presents the social systems approach used to provide an understanding of the existing systems. Qualitative data analysis and reporting of the case study are presented in section 4.6. The methods identified are chosen to deal with four primary areas of investigation: customary and statutory tenure and administration, institutional assessment, the role of traditional authorities in land administration, and examining the customary and statutory legal frameworks. The determining factors for measuring the quality of research are discussed in section 4.7. Section 4.8 presents the limitations of the research methods, while section 4.9 ends the chapter with a summary.

4.2 Case Study Strategy

"A case study is an empirical inquiry that investigates a contemporary phenomenon (the case) within its real-life context, especially when the boundaries between the phenomenon and the context may not be evident" (Yin, 2009: 16). A case study is found appropriate when a 'how' or 'why' question is asked in the investigation of an event, "over which the investigator has little or no control" (Yin, 2009: 2). Because it permits researchers to exercise their discretion (Zevenbergen, 2002), the case study methodology is appropriate for tackling issues that are 'unstructured' and 'wicked' in nature (Yin, 1994; Barry and Fourie, 2002). This flexibility allows for the case study methodology to be applied to a variety of research problems. Unstructured and "soft" difficulties may include, but are not limited to, situations involving the comprehension and interpretation of an environment that is focused on conflicting or ambiguous objectives, or a scenario in which a number of variables can be altered over time (Barry and Fourie, 2002). In Nigeria, LASs and legal systems are complex and unstructured. Hence the justification for adopting a case study approach for this research. Several researchers studying LASs have also found a case study beneficial (see, for example, Whittal, 2008; Bandeira, Sumpsi and Falconi, 2010; Mabesa, 2011; Ali, Zevenbergen and Tuladhar, 2013; Hammond, 2016; Diala, 2019; Hull, 2019).

4.2.1 Unit of analysis

The unit of analysis helps focus on the relevant part of a system, organisation, or object. Hence it is significant in case study research. In this research, the units of analysis are the customary and statutory legal frameworks and LASs, as discussed in chapters 2 and 5. The focus of the investigation in each customary peri-urban area is the legal framework for land administration which includes both customary and statutory institutions. Each of the customary institutions is a separate unit of analysis. To adequately address the diverse customary institutions within the state, the study adopts a multiple-case study design, comprising three case study areas and several units of analysis. A design involving a

multiple-case study is appropriate as it helps apply an array of methods within the sub-units. The themes of the subunits are the application of customary and statutory law, collaborations between customary and statutory institutions in the land administration process, RLM, and recognition of pro-poor approaches to land administration. The details of each sub-unit of analysis combined into the final analysis make the study more robust (Herriott and Firestone, 1983; Scholz and Tietje, 2002).

4.2.2 Multiple case study design

A multiple-case study design is used to describe the roles of customary and statutory authorities in land administration to help design the research for a reliable generalisation to substantive theory. The statutory legal framework in customary land administration, individuals' relationships with the legal framework (customary and statutory), social, economic, and political landscapes and processes are included. It is expected that these landscapes and methods differ from place to place but still encompass the range of possibilities that exist in Southwest Nigeria as a whole. The underlying logic of multiple-case study design is that each case must be carefully selected to either produce similar (literal replication) or contrasting (theoretical replication) results (Yin, 2009). The study is confined to three areas because it was challenging to find three similar peri-urban areas (see section 4.2.3). However, an equilibrium was found, with naturalistic generalisation to areas with similar customary and statutory legal frameworks.

Multiple case study areas are used so that findings are based on diversity from cases which aid reliability and generalisation to substantive theory (Barry and Roux, 2012). Several cases cannot be investigated using a single case study. Hence the use of new case studies will be a process ongoing by many researchers. The substantive theory will be improved over time using the analysis and generalisation process from other researchers.

The conceptual tools developed in Chapter 8 will be useful for countries to assess LASs and their legal frameworks from a constitutional viewpoint. It will further help measure tenure

security by determining which form of legal pluralism in LAS exists in peri-urban areas. Application of these conceptual tools in a new context requires a process of naturalistic generalisation.

4.2.3 Selection of case study areas

There are six regions in Nigeria, each comprising six states (South-West, South-South, South-East, North-West, North-Central, and North-East). Three regions in the North have a mixed legal system of customary, statutory and Sharia laws, while in the South, there are customary and statutory laws. The three regions in the North were excluded because the scope of the study excludes areas in which Sharia law is practised. Southwest Nigeria was selected from the three regions of the South because, firstly, the region has existing competing LASs and the coexistence of a plural set of laws (Ukaejiofo, 2008); secondly, it is representative of the situation in the whole South region and, thirdly, the researcher is also from South-Western Nigeria which is helpful in terms of making contacts and using local knowledge that facilitates data collection. The researcher has the benefit of being familiar with the language and customs of the area, possessing a deep understanding of the case study area, and having easy access due to social belonging.

The entire region was formerly a western region with the headquarters in Ibadan (Alapiki, 2005: 57). Political and administrative subdivision resulted in six states with Ekiti State created in 1996 from the old Ondo State, making Ekiti State the youngest state (Alapiki, 2005). Aspects uncovered by this research in Ekiti State are likely to be similar to those for the whole Southwest region. In addition, the influx of people into the new state is extremely high, resulting in high demand for land, which requires the study of the interaction of the people with the customary and statutory legal framework in Southwest Nigeria. Hence, from Southwest Nigeria, Ekiti State was selected to provide the empirical data for the research (See Figure 4-1) and the findings are generalised to Southwest Nigeria.

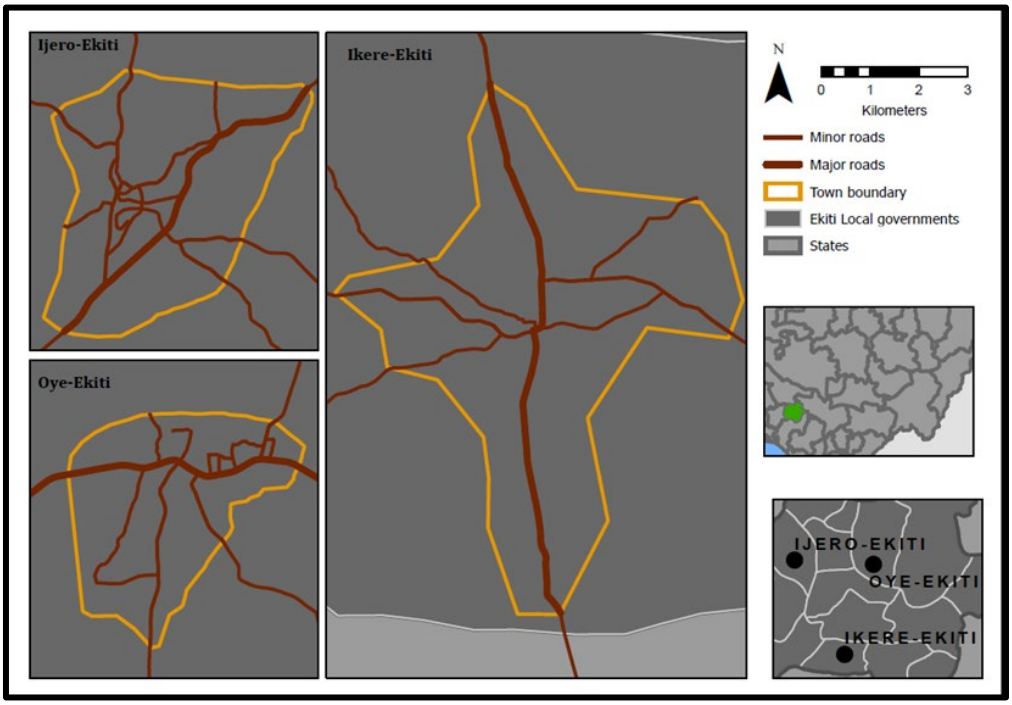

Figure 4-1. Study Sites

Literature review and site visits were used to identify the peri-urban case study areas. These data indicate the stage of development, the customary institutions, the presence of customary courts, and land administration issues. Six peri-urban areas were initially short-listed for the study: Ikere-Ekiti, Ise-Ekiti, Ijero-Ekiti, Epe-Ekiti, Oye-Ekiti, and Ayegbaju-Ekiti. From this list, Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti were selected for the study using the following criteria:

1) Geographical spread within the three senatorial districts of the State i.e., Ikere-Ekiti was selected from Ekiti Central Senatorial District, Ijero-Ekiti was selected from Ekiti South Senatorial District, and Oye-Ekiti was selected from Ekiti North Senatorial District. All these towns are local government headquarters (Government of Ekiti State, 2021).
2) Each region houses a government-established tertiary learning institutions linked to the high demand for land. The establishment of a tertiary institution results in rural and peri-urban migration. The migrants need land for residential purposes.

This criterion was chosen so as to investigate the interface between customary and statutory institutions due to the high demand for land from both institutions.

3) The presence of naturally occurring minerals, which also contributes to economic activities within these areas. The central focus of the study is the customary and statutory legal framework for land administration, which is used for economic activities, hence, the importance of this criterion.
4) The nature of the towns - the towns must have peri-urban areas, enabling the findings to be generalised to substantive theory.

There is also the presence of plurality in laws, tenure, and administration in all the six case study areas selected. However, no government established institutions, and minerals resources in Ise-Ekiti, Epe-Ekiti, and Ayegbaju-Ekiti. Also, there are no local government headquarters with no rural to peri-urban movement.

The criteria used in selecting the three peri-urban areas provide insights into the current customary and statutory institutions, stages of development resulting from the establishment of institutions, and presence of natural minerals. These are summarised below (see Table 4-1):

- geographical distribution using the senatorial district in Ekiti State to depict a fair representation of the entire state;
- location of natural minerals such as limestone, columbite, foundry sand, charconite granite, cassiterite, tin ore, and taumalin;
- a mix of customary and statutory laws, tenure, and administration;
- a blend of customary and statutory institutions and diversity in customary institutional structures;
- local government headquarters location;
- high demand for land;
- land management and land development activities;

- rapid urbanisation due to the influx of migrants from rural to peri-urban areas.

A detailed description of the case study areas is discussed based on location, demographic information, land administration, and legal framework.

Table 4-1 Case Study Selection Criteria

Peri-urban areas	Location	Mix laws, tenure & administration	Mineral resources	Local Govt. HQ	High Demand for land	
Ikere-Ekiti	Central Senatorial District	Yes	Yes	Yes	Yes	Selected
Ise--Ekiti	Central Senatorial District	Yes	No	No	No	Rejected
Ijero-Ekiti	South Senatorial District	Yes	Yes	Yes	Yes	Selected
Epe-Ekiti	South Senatorial District	Yes	No	No	No	Rejected
Oye-Ekiti	North Senatorial District	Yes	Yes	Yes	Yes	Selected
Ayegbaju-Ekiti	North Senatorial District	Yes	No	No	No	Rejected

4.3 Mixed Methods Design

Mixed methods design helps the researcher to collect data for analysing cases that require an in-depth and complete understanding of a phenomenon (Guetterman, 2017). Peri-urban land administration is complex and requires researchers to use methods that provide understanding of the problem situation. Qualitative and quantitative research methods were used in this research. Mixed methods design strategies allow the application of mixed methodology. This study collected qualitative and quantitative data (see section 4.4). The qualitative method was used to collect 'open-ended data', and the quantitative approach was used to collect 'closed-ended data'. Both forms of data provide a check for one another. The qualitative case study involves an in-depth analysis of a bounded system (Merriam and Tisdell, 2016: 42). Qualitative research methods are differentiated from quantitative

research methods by their flexible approaches (Yin, 2009; Creswell, 2013). For instance, qualitative research methods help to provide an in-depth understanding of a case. A qualitative research approach is appropriate to understand a problem situation's soft/unstructured aspects (Yin, 1994). Quantitative approaches complement the study in comparing responses between respondents in the three case study areas. Yin (2009) considers quantitative methods to be rigorous, reliable, outcome-oriented, and genuinely scientific.

In this study, a convergent mixed methods design was employed (Creswell and Guetterman, 2019). Convergent mixed method designs allow for the simultaneous collection of qualitative and quantitative data *(ibid*.). The data are then merged, and results are compared while explaining any discrepancies in the findings. The primary rationale for using a mixed convergent design in this research is that the strengths and weaknesses in qualitative and quantitative research compensate for each other. A complete understanding of the research problem is thus achieved using mixed methods design. In Figure 4-2, the simultaneous collection of qualitative and quantitative data is shown on the left and right arms, respectively. The diagram illustrates that after data collection comes analysis and hence the results. The results are then merged for comparison. A final interpretation is made to explain whether the findings converge or diverge.

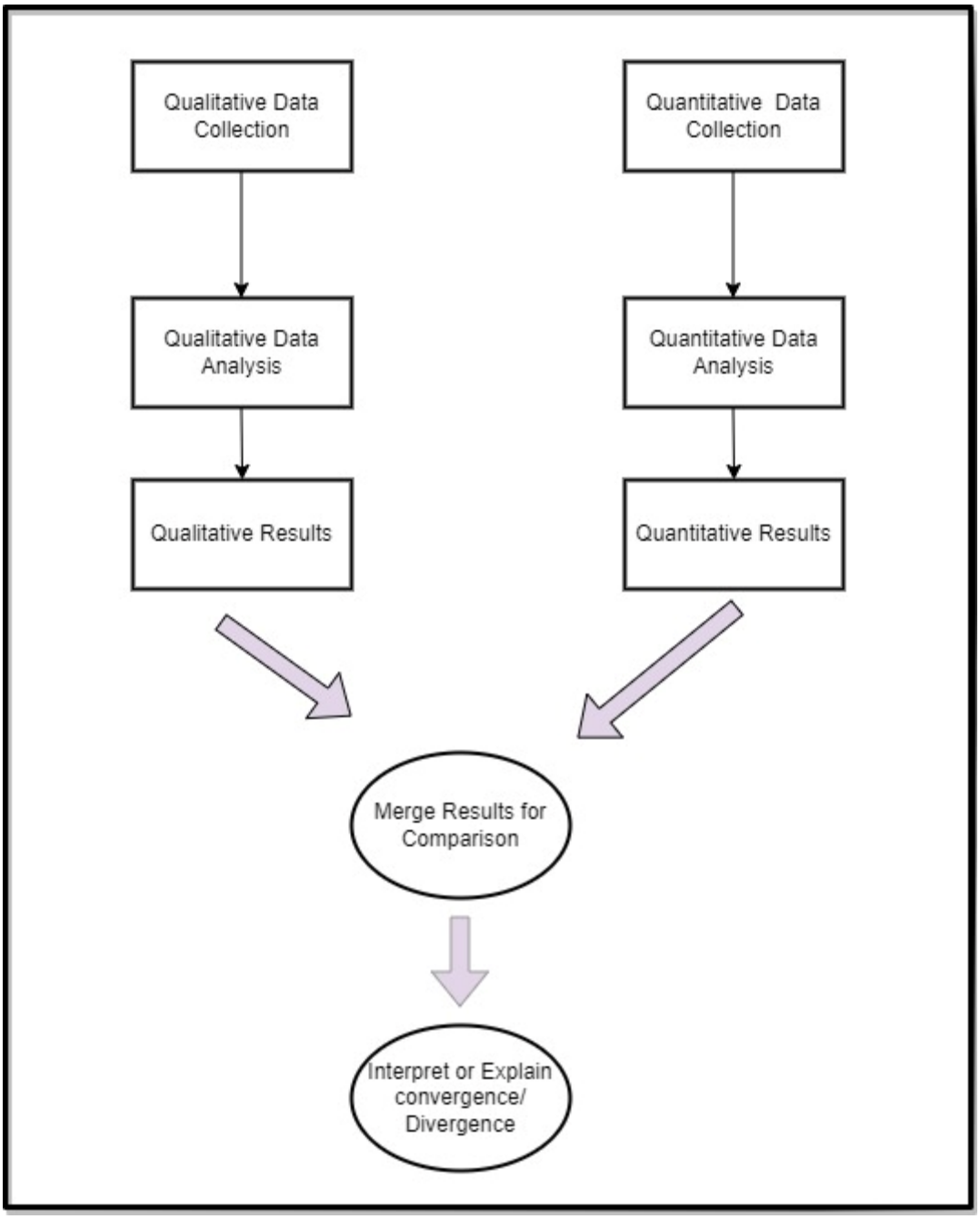

Figure 4-2. Convergent Mixed Methods Design (adapted after Creswell and Guetterman, 2019: 291)

4.4 Research Methods adopted for Data Collection

In this study, multiple sources of evidence are used in collecting data, as Yin (2009) advised. The data collection methods are interviews, documentation, direct observation, and participant observation. These multiple sources of evidence allow for converging lines of enquiry, which provides for triangulation and appraisal of information from diverse perspectives (Yin, 2009; Merriam and Tisdell, 2016). In this way, primary data collected

through interview were validated through comparison with documentary evidence. The interview transcriptions were presented to the interviewees so that they could confirm that their contributions had been faithfully recorded and/or make amendments and/or make additions as they seemed fit. The following section presents the data collection methods.

4.4.1 Analysing the existing legal framework for land administration

In the case study areas, fieldwork was conducted to acquire primary data. The case study extended understanding of the customary and statutory legal frameworks pertaining to land administration and how they have evolved. Emphasis was laid on the description of the existing customary and statutory legal frameworks, understanding of customary and statutory tenure systems and administration, and the roles of traditional authorities in land administration. This also includes the effects of the changes on the tenure security of landholders in rural and peri-urban areas and how they have responded to these changes. The data collection for analysing the legal framework occurred between January and July 2021.

Empirical data involved direct interaction with the people and the process (people-based approach). Primary data were collected from fieldwork on LASs needs and practices within Ekiti State. Interviewing as a data collection strategy was adopted because it provides in-depth understanding to contribute to meeting the objectives of the study. Open-ended, structured, and focused interviews were conducted with key informants and other participants. Interviews were conducted at the MLHUD, BLS, and OSG (statutory institutions). At the statutory institutions, land officers, directors, and deputy surveyor-general were interviewed. Traditional leaders, family heads, land dispute committee members, and land allocation committee members (customary institutions) were also included. These interviews were conducted in all three peri-urban areas selected for the study.

Land-related ministries and relevant departments were included since they are responsible for formal land administration. Traditional leaders were included since they are the custodians of the land in customary areas and are responsible for customary land administration. A mix of open-ended and structured interviews was used at the customary level. An open-ended interview allows the researcher to gather more nuanced information regarding land administration in customary areas. It further helps the researcher with pertinent issues regarding the research questions that were not conceived of in the structured interview. Also, in-depth interviews provide flexibility, allowing the respondents to respond freely while ensuring that the researcher still covered the same data collection.

For both the government and customary institutions, key informant sampling was adopted to select knowledgeable interviewees. The same sampling technique was used by Hull (2019) to garner expert opinions. Purposive sampling was also used to identify additional key informants. In the case study areas, certain 'gatekeepers' are used constructively in the research to gain access to knowledgeable people necessary to achieve the study's objectives. The key informant sampling entails targeting land administration expert for information. The researcher looks for the sources—people and written materials—that can best address the study objectives. This also incorporates a snowball sampling component, where the researcher is directed by the respondents as to who to interview next since the interviewers know who can more effectively offer the answers to the questions. At each of the statutory institutions, interviews were conducted with three land administration officials. Three private practicing professional land surveyors, and nine traditional leaders were interviewed making a total of 18 interviews conducted.

Structured interviews at the land administration agencies were used to collect data related to operations and coordination among land administrators, such as land administration challenges, the role of ministries and agencies in solving land-related disputes, administering land transactions and land allocations. The perspective of the ministries and

agencies concerning the relationship between statutory and customary institutions was also interrogated. Others interviewed were land rights-holders because land rights-holders benefit from LASs.

An interview sheet was designed to obtain information using a household survey in the three peri-urban areas. A total of three hundred household surveys were conducted using quantitative techniques. The main sampling criterion used was that land rights holders must have lived in the community for over ten years. Ten years is considered enough time for land rights holders to contribute to a survey based on their experience on land administration in peri-urban areas. Both indigenes and non-indigenes were included. In the household survey, 150 from Ikere-Ekiti, 50 from Ijero-Ekiti and 100 from Oye-Ekiti responded to the survey. In total, 75% of respondents were indigene, while 25% were non-indigene; 80% of respondents were male.

The field study required the researcher to determine if customary courts in Nigeria operate within two institutional fields, either complying with the European adopted system or with indigenous systems. Documents and interviews formed the primary data to understand the procedure of the administration of justice. Institutional isomorphism theory in organisation studies was used to study the processes to ascertain if customary courts and CCAS operate between two organisational fields and to ascertain how customary laws are embedded in the judicial process.

Qualitative tools were also used to determine access to customary courts and the operations of customary courts. The in-depth interviews provided data on issues of customary laws in land administration, focussing on the mechanisms of resolving the dispute using customary law.

4.4.2 Assessing responsible land management

This field study aimed to determine the extent to which land management is responsible—using the RLM elements identified in Chapter 2. These RLM elements (Table 4-2) show a summarised version of the main questions as shown in the appendix and they informed the questions asked of the respondents. The RLM questions were based on assessing structures, processes, and impacts. Eight indicators were identified for RLM, as shown in Table 4-2.

Table 4-2 Indicators of RLM and assessment questions used

Indicators	Explanation of Indicators	Responsible land management assessment question
Resilient	Intervention structures must be firm enough to withstand unforeseen circumstances in order not to break down.	▪ How has the formal LAS accommodated customary flexibility? ▪ Is there any community-based dispute resolution committee? ▪ What are the inconsistencies and contradictions in the LUA? ▪ Is there any committee in charge of land matters in the state? ▪ How are members of traditional land governance appointed?
Robust	Intervention execution must be well established, followed and developed into a stronger system that can withstand collapse.	▪ Are innovative ways of recording land rights recognised by the Statutory Legal Framework (SLF)? ▪ Are you collaborating with customary institutions in land administration in peri-urban areas? ▪ Is there any interaction between the people and the government? ▪ Are there interactions between the people and traditional institutions? ▪ Are there any LA tools developed to aid land management in managing customary and statutory processes?
Reliable	People should be able to trust the intervention system to deliver the expected results.	▪ Are public officials, agencies, and non-state actors accountable to the public concerning LA? ▪ How do the state and local governments make land accessible? ▪ How can you rate the statutory land registration processes? ▪ Is land use planning functioning well? ▪ How is tenure security ensured in the community?

Respected	Intervention planning must be free from all forms of biases and corruption and other acts that raise doubts about it.	▪ How are people compensated when their land is acquired for public purposes? ▪ Are there free and fair avenues to lay such complaints when not satisfied with compensation? ▪ Are women's land rights protected under statutory laws and institutions? ▪ Do men and women have equal land rights? ▪ Are public officials, agencies, and non-state actors accountable to the public? ▪ In accessing land in the state, are there any forms of corruption? ▪ Are land rights holders evicted from their land?
Reflexive	Intervention structures and management should inculcate the people and their ideas to be able to allow them to contribute meaningfully.	▪ How are community members engaged in the LA process? ▪ How are local norms, knowledge, and customs accommodated? ▪ What are the challenges of the integration of customary and statutory laws? ▪ Do statutory institutions recognise the customary system of conflict management? ▪ How are customary land laws made available to community members?
Retraceable	Intervention structures must be clearly defined, and decision-makers are known. The procedures must be well documented to allow for future references.	▪ Are the interventions in land management clearly defined? ▪ Is there clarity in the procedures of LAS? ▪ Who are the decision-makers in LAS?
Recognisable	All stakeholders' interests are considered in the intervention, and they must as well be represented to make them	▪ How are community members engaged in the land administration process?

	accept and recognise the intervention.	▪ How are men and women represented in the Traditional Land Governance? ▪ Do you think the exclusion of customary leaders in customary courts affects its legitimacy? ▪ How does the exclusion of customary leaders in the constitution affect the plurality of the legal system? ▪ Do traditional authorities have the institutional capacity to administer land using customary law?
Responsive	There should be avenues for stakeholders' interactions and feedbacks.	▪ What is the level of collaboration of traditional land governance (TLG) with statutory institutions? ▪ How has the formal LAS accommodated customary flexibility? ▪ How are the customary processes of LA applied? ▪ Are your land administration needs addressed in this community?

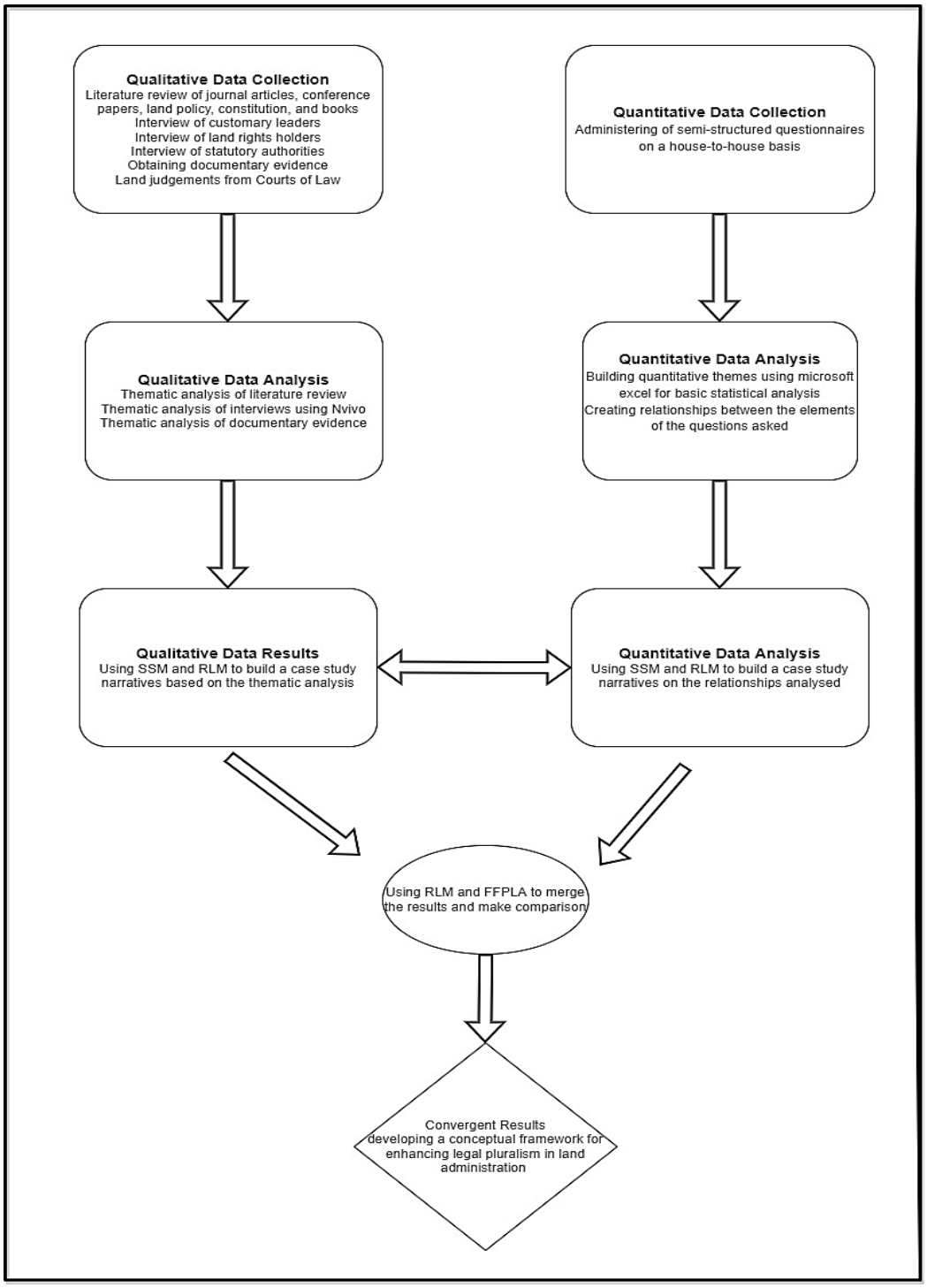

Figure 4-3. Convergent Research Design study of Assessing LASs with their Legal Frameworks

Research assistants supported the researcher during the data collection stage in these peri-urban areas. As adopted in the previous data collection stage (4.4.1), both qualitative and quantitative tools were used during the data collection process, with a concentration on the qualitative tool, which is the primary technique used in the study. In-depth interviews were

conducted with Obas, chiefs, family heads, elders, and land committee members. The focus of the interview is stated in section 4.4.1. To determine how responsible the land management is in the study area, a quantitative household survey, as described in section 4.4.1, also contributed to the data collected for this section. See Figure 4-3 showing the convergent research design for this study.

4.4.3 Appropriateness of responsible land management

As discussed in section 2.4, the RLM was considered appropriate in this study as an analytic tool. RLM is based on ontological and axiological notions of management (de Vries and Chigbu, 2017). The development of RLM was based on theories from public administration, politics, planning, and social sciences which makes it suitable for multi-disciplinary research, in which this study is not an exception. Informed by the following factors, this study adopted the 8Rs of RLM to assess LASs.

- The selected elements seek to address vital issues in peri-urban areas.
- The elements are related to what is termed responsible land governance practices (FAO, 2012; Zevenbergen, *et al*. 2015).
- Land management sets the strategies for implementing land policy (Hull and Whittal, 2019).

Table 4-2 interprets the indicators that make RLM suitable for this study.

4.4.4 Appropriateness of fit-for-purpose land administration

Using the same field survey data from previous sections (4.4.1 and 4.4.2), the FFPLA elements were used to examine the LAS in the study area. This was aimed at determining:

- to what extent the LAS is inclusive of the poor who are peri-urban dwellers,

- whether alternative approaches are used in boundary demarcation,
- whether the legal framework for land administration is flexible, and
- to what extent the institutional framework for land administration is inclusive.

Each FFPLA element has four fundamental principles, totalling twelve critical principles to deliver a sustainable FFPLA system (Figure 4-4). In Figure 4-4, the legal and institutional frameworks in light orange are central to addressing the objectives of this study.

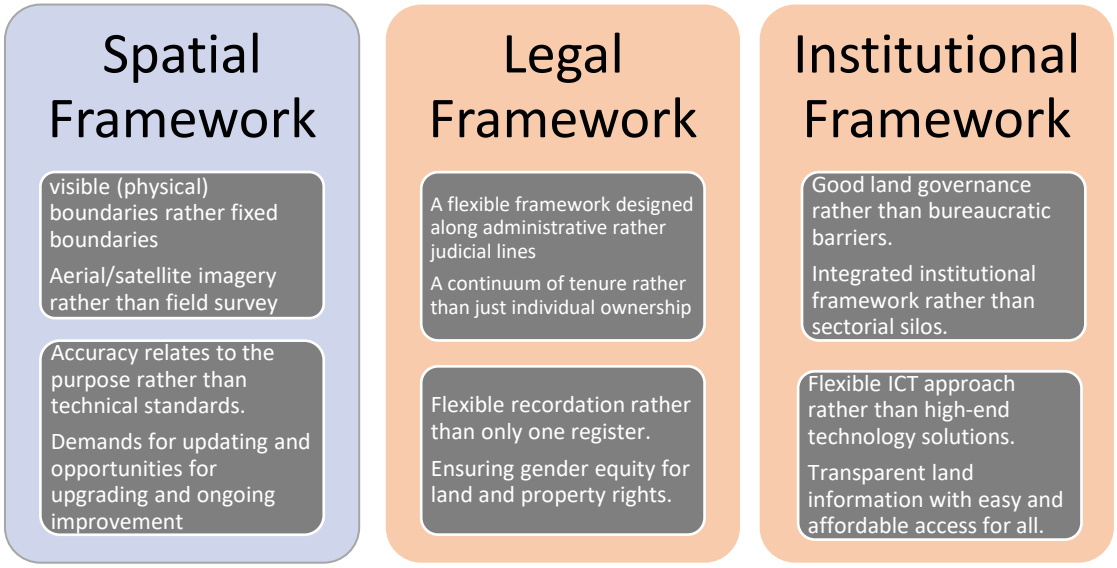

Figure 4-4. The Components and Key Principles of the Fit-For-Purpose Approach (Enemark *et al*. 2016)

4.4.5 Secondary data collection

A text-based approach was used to acquire secondary data, that is, obtaining information through policy documents, statutes, magazines and newspapers, regulations, books, conference proceedings, case judgements, and journal articles on LASs, cadastral systems, and land laws. These were reviewed to filter out the information necessary to answer the research questions. In the literature review stage, the search criteria used to identify sources were as follows:

- The combinations of the following phrases: land, LAS reform, land tenure reform, rule of law, human rights, and legal pluralism were used to interrogate for peer-

reviewed journal articles, conference papers, doctoral theses, books and briefs on policy issues using Google Scholar, Springer Link, ScienceDirect, and JSTOR.

- Literature was limited to publications in the English language.
- Sources were focused on SSA and other developing contexts.

The secondary data also allowed for triangulation with primary data sources. The legal framework for land administration was studied by analysing policy documents and statutes in Table 4-3.

Table 4-3. Statutes and Legislation Documents

No and Year	Title
36 of 1924	Land Registration Act
13 of 1935	Registration of Titles Act
28 of 1958	Wills Act
133 of 1959	Administration of Estates Law, Cap 1 Laws of Western Region of Nigeria
6344 of 1959	Property and Conveyancing Law
III of 1965	Registered Lands Act
6 of 1978	Land Use Act
88 of 1992	Nigerian Urban and Regional Planning Law Decree.
1999	The Constitution of the Federal Republic of Nigeria
2020	Illiterate Protection Act
3 of 2020	Companies and Allied Matters Act

Also, customary laws governing land administration were investigated since understanding the mixed legal framework as it relates to land administration was critical to the study.

4.5 Soft Systems Methodology

Soft systems methodology (SSM) helps build the case study narratives of LAS and the social, cultural, historical, and political elements relating to a LAS. SSM is used in Chapter 7 in

analysing the structure and processes of customary and statutory institutions using multiple perspectives of LASs.

In this study, SSM is used to model the interaction, structure, and processes of the customary and statutory institutions within Ekiti-State LAS. Ill-structured and disorganised aspects encountered within the LAS were also identified. The LAS in Ekiti State involves the interaction between customary and statutory institutions. Within these institutions, people have different world views (as well as ontologies and epistemologies) per their experiences and beliefs. SSM tools were used to analyse the LAS (see section 3.3.3). The same tools were also used to analyse peri-urban problems in Botswana (Nkwae, 2006), the case study of the fiscal cadastral system in Cape Town, South Africa (Whittal, 2008) and the LAS in Lesotho (Mabesa, 2011). SSM is yet to be used in LAS studies in Nigeria.

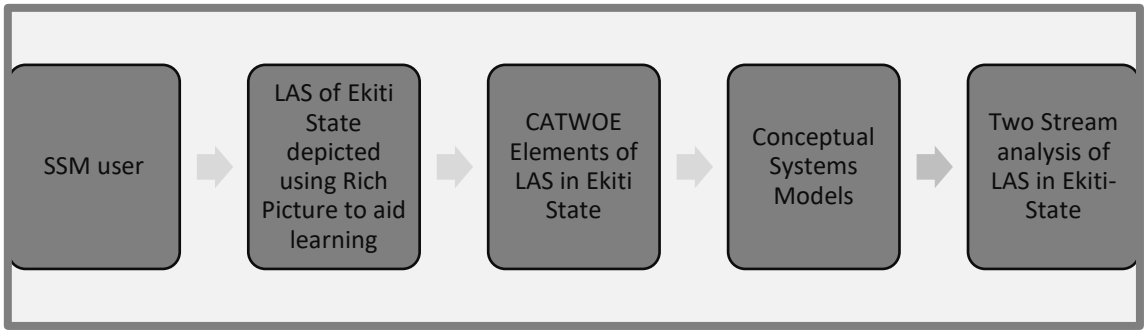

Figure 4-5. SSM Process of Two Streams

The use of SSM to understand the LAS of Ekiti State is shown in Figure 4-5. The description of the customary and statutory legal framework for LAS is presented in Chapter 5. The rich picture of the problem situation is produced from the rich descriptions generated. The CATWOE elements were developed using detailed explanations and rich pictures, with several human activity systems regarding the problem situation identified in the LAS. The conceptual model was used to model the problem situation. To support the analysis, the two streams of SSM (a cultural and logic-based stream of analysis) were used. The following sections discuss how the SSM tools are applied in this study.

4.5.1 The SSM tools of the LAS in Ekiti State

A freehand drawing is used to illustrate the interface and interactions which exist between the customary and statutory legal frameworks for LASs. This freehand drawing shows a rich picture of the problem under study. The rich picture includes state actors and non-state actors involved in LA, stakeholders, issues of customary and statutory institutions, and LAS problems. A holistic understanding of the problem situation is supported by developing a rich picture that draws on multiple perspectives. The rich picture also includes the worldviews of the role-players in the present situation (see Figure 7-5).

The root definitions were used to investigate the problem thoroughly and holistically, with this illustrated using the six elements in the mnemonic CATWOE (see section 7.3.2). The conceptual human activity system is formed from the six elements used in the analysis of the two-stream system of SSM (Checkland, 1999). Defining the elements, customers are the system's beneficiaries, and actors include state and non-state actors. The transformation is the structure and process of operation of land administration, i.e., meeting the need for an efficient system by considering how the input is converted into output to meet the requirements for an efficient system. Land-holders and the environment include the existing constraints outside the system acting directly or indirectly.

The conceptual model of the problem situation in LAS in Ekiti State was produced based on social, legal, institutional, economic, political, and organisational elements (see Figure 7-7). These elements provide an insight into the problem situation as expressed in the rich picture and CATWOE elements. This study uses a shared belief that LASs should promote tenure security. The conceptual system selected was the human activity system to facilitate understanding of LAS from a social systems perspective.

4.5.2 Two streams analysis of SSM

In section 3.3.3, the two-streams analysis aids the modelling of the structure and processes of the LAS and its environment (see Figure **3**-**2**). As viewed by the researcher, the relevant human activity systems models are studied and contrasted to the real-world situation. Based on the social, economic, and political status of Ekiti State, further analysis of the system's operation was facilitated. These human activity systems determine the impact of a hybrid legal system on LAS.

The two streams are used analogously and are intertwined (Reid *et al*. 1999). **The cultural-based stream of analysis depicts LAS's social, economic, and political aspects** in Ekiti State, Nigeria (Checkland and Scholes, 1990). Findings from the cultural-based analysis contribute to the logic-based analysis and the rich description (*ibid.*). Social and political analysis of the cultural-based stream is used in this study. In contrast, the intervention analysis is excluded because the primary aim is to understand if a hybrid legal system contributes to tenure insecurity.

A logic-based stream of analysis is guided by system thinking, including the enquiry phase (Reid *et al*. 1999). Action is defined using the logic-based analysis stream and is systematically desirable (Checkland, 1981). As stated in section 3.3.3, tasks and issues pertinent to the problem are identified from the rich descriptions and constructed as models of relevant human activity systems (*ibid*.). These are labelled as root definitions and represented as conceptual models. The conceptual models of the relevant systems are compared with the real world to understand the problem situation (Reid *et al*. 1999). Actions are defined and ensured through learning and debate to improve the situation (*ibid*.). Note that i*mproving the system is not part of this research – the SSM model was used for providing understanding, not to provide solutions.*

4.5.3 Appropriateness of SSM

As explained in the theoretical framework and discussed in the preceding paragraphs, SSM was considered appropriate for this study as it aided in the understanding of complex situations of LASs with their legal frameworks (Nkwae, 2006; Whittal, 2008; Mabesa, 2011; Akrofi, 2013). In addition, it helped diagnose ill-structured and complex problems (Checkland, 1999). LASs and the associated legal frameworks in Nigeria are complex and ill-structured (Ukaejiofo 2008). SSM was combined with RLM and FFPLA to provide an in-depth understanding of the current LASs with their legal frameworks.

4.6 Qualitative Data Analysis and Reporting

4.6.1 Qualitative data analysis

Chapters 5, 6, and 7 discuss the existing customary and statutory legal frameworks for land administration within and across each case study area. The views of different groups, such as land rights-holders, customary leaders, and farmers, are presented.

The initial stage of analysis is focused on each case study separately. A cross-case study analysis follows and is referred to as pattern matching. 'Pattern matching' and 'explanation building' are used as analytical techniques in this study (Yin, 2009). The analytical methods adopted to address the research questions are examined, categorised, tabulated, and the evidence is recombined (Yin, 2009). Descriptive analytical procedures involve examinations and explanations of the data collected during the field study. For pattern matching, a table was prepared to compare governance dimensions in the customary and statutory legal framework for land administration. Specific variables were developed and used in the comparison with each variable proposed for each of the 8R indicators of RLM – see Section 4.4.2.

For the analysis of the legal framework, the data comprises field notes, transcripts, and documents. Field notes taken during interviews were studied alongside the transcribed

interviews. The transcribed interviews and documents were coded and categorised using NVivo 12 to ensure data transparency and reliability, and to draw meaning from the extensive qualitative data. The coding and categorisation using NVivo enables replication of the research process by other researchers. Allan (2003) explains coding as a process of identifying key topics and explanation of these topics with brief catchphrases. Similar themes are determined from the data, and similar codes are grouped into concepts and similar concepts into categories. A separate list of codes was made at this stage, and a comparison was created with the first transcript. The two lists were then merged into a master list which became the categories in which the subsequent theme was analysed. The interview data was verified against documentary evidence to ensure triangulation.

The transcribed interview and the documents were imported into NVivo 12, after which, the text was categorised using the 8R indicators of RLM. The key issue addressed in the study is legal pluralism in land administration by assessing LASs with their legal frameworks. By coding, elements are identified in the data using different colours. During coding, the factors that contribute to deep and weak legal pluralism in LAS emerged, culminating in the development of a conceptual framework for enhancing legal pluralism in LASs (see Chapter 8).

4.6.2 Quantitative data analysis

For quantitative analysis, two stages were involved: firstly, the analysis of the survey administered (see section 7.6) and, secondly, the use of a Likert scale of 1 to 6 for the analysed survey data (6 is excelent and 1 is poor; see Chapter 8). To apply the convergent mixed method design of this study, both the qualitative and the quantitative analysis were carried out.

4.6.3 Case study reporting

Two reporting levels are used in a multiple case study design: writing case study reports and providing a comprehensive description of the study (Yin, 2009), emphasising commencing with 'parts' of the report. A case study report is written for the selected case study area. The first part excludes detailed analysis but includes historical background and a reflection of LAS and customary and statutory laws investigated. The next stage is the case analysis based on a qualitative analysis of case study data. After that, case study narratives are developed to describe the LAS practices and land laws within the legal framework in the case study area. The outcomes of the analysis are used to identify the features and state of tenure security in the LAS in the case study area. Chapters 5, 6, 7 and 8 discuss the case study reports and the study's main findings using the research questions as a specific line of enquiry.

Case study generalisation and theory development are essential considerations at the design stage of case studies. Yin (2009) categorises theories as individual, group, organisational, societal, and decision-making. This research contributes to societal, organisational, and decision-making theory:

- societal theory involves cultural institutions (role of the traditional institution in land tenure and land adjudication);
- organisational theory involves structure and functions (LAS in peri-urban areas and the role of land administrators) and institutional capacity of LAS;
- decision-making theory refers to the government's plans to develop land policy and enact land laws pertaining to land tenure and adjudication.

The research contributes through analytical generalisation to theory on the effects of plurality of laws coexisting in LASs in Nigeria. The findings may be generalised to other case study areas in Southwest Nigeria using a naturalistic generalisation. Naturalistic

generalisation allows the researcher to apply the ideas and in-depth depictions from the case study analysis to personal or situational contexts that are similar (Mills *et al.* 2010).

In the case study narratives, the identity of the respondents were preserved so that the respondents remain anonymous. The description used are TA-Traditional authorities, SA-Statutory authorities, LRH- land rights holders, and PLS- Professional land surveyor. The abbreviations are used with a one digit number. The researcher agreed to keep the table pertaining to the letter and number code that will eventually be destroyed as per the ethics agreement with the University of Cape Town.

4.7 Research Trustworthiness

Validity and reliability are used to evaluate the quality of research. Multiple sources of evidence, a case study database, data triangulation and maintaining the chain of evidence (Yin, 2009) were followed in this study to ensure the validity and reliability of the case study. Validity was enhanced in this study by obtaining data from both the state and traditional leaders as well as individuals; this overcomes potential bias that would be a problem with data from only one view/role-player. Internal validity was ensured by sharing interview transcripts with the interviewees to ascertain their correctness. Members of the University of Cape Town land tenure and cadastral systems research group also scrutinised the methods and results. Triangulation was ensured by corroborating the interview data with documentary evidence of LASs' practices. Also, the use of mixed methodology, different categories of data, and interviews with land professionals provided different perspectives and allowed a broader understanding of the phenomenon under study (Yin, 2009).

4.8 Limitations of the Study

Firstly, the impact of Covid-19 was significant during this research study. The interviews were conducted online due to travelling restrictions to avert the spread of the deadly coronavirus. The online interview method was also adopted to avoid direct contact with

respondents as South Africa was tagged as a high-risk country by Nigeria, where my case study was located. As such, I was unable to travel to Nigeria.

Secondly, a thorough process of the case study approach was executed using the data collection methods 'methodically' and was found appropriate for the study. However, limitations abound in the study. The qualitative interviews were based on the respondents' perspectives of the case study under investigation and may not accurately represent the entire community's perspective. The study obtained evidence from land administration experts, land rights holders, and customary leaders. Furthermore, evidence was sought from documents relating to the study, which were incorporated for the analysis of the study. The document evidence corroborates all stakeholders' views in customary peri-urban areas. Thus, through triangulation of data sources, the researcher is satisfied with the reliability of the data.

4.9 Summary

Case study research design using a convergent mixed methods approach was used in this study to collect and analyse the evidence needed to answer the research questions (see Figure 4-3). A case study methodology is appropriate for an empirical study due to the nature of the study. Multiple sources of evidence were used to collect the needed data for the research and analysed across case study areas. Multiple case study areas used in the study were the peri-urban areas of Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti, respectively selected from each of the senatorial districts in Ekiti State to address different customary areas and institutions. The field data were used to collect data to address issues of the customary and statutory legal frameworks in land administration. The field data were broken down into the role of traditional leaders in customary land administration, the impact of the statutory legal framework on customary land administration, RLM, access to customary courts, and assessing FFPLA.

Qualitative and quantitative data collection methods were applied in this study based on in-depth interviews using structured and unstructured interview questions. The data were used to describe the role of the customary and statutory legal frameworks in LASs. The next chapter develops a case study narrative of the current LASs with their legal framework in Ekiti State.

The used of mixed method design by incorporating case study methodology, SSM with analytical framework (RLM and FFPLA) in this research is yet to be used in Geomatics domain and in Nigeria. This form of mixed method designs contribute to knowledge in Geomatics.

5 Case Study Narratives of the LAS and Legal Framework in Ekiti State, Nigeria

5.1 Introduction

In Chapter 2, debates around the nature of legal pluralism in LAS are examined. From the examination, customary land tenure and administration are shown to be resilient despite attempts to replace them. This chapter provides an understanding of the legal framework in Nigeria from the pre-colonial to post-colonial periods to identify aspects that should be considered when designing LASs. The chapter further discusses sources of law, government objectives, and the policies used to administer land in customary and statutory areas. Attention is paid to the nature of customary and statutory landholding and the transfer of rights and interests in customary and statutory land. The current use of government policies and the extent of that use are summarised. The importance of supporting the existing legal framework for land in urban and rural areas is discussed. Understanding the legal framework from the pre-colonial to post-colonial periods may help identify the aspects that need improvement when situating LAS within legal pluralism.

Nigeria is rich in both renewable and non-renewable resources. The primary sources of foreign exchange are crude oil, coal, tin, and columbite. The agricultural sector contributed 25,16% to the GDP in 2019, with total employment in the industry put at 36,38% (National Bureau of Statistics, 2020), implying that land is actively used. For some farmers in peri-urban areas whose financial means limit their ability to use formal land administration, there is a need for a secure and pro-poor means of land administration. It should be flexible and designed for the specifics of the context. The flexible nature should accommodate customary laws and institutions in the land administration. The flexible nature may discourage land grabbing and land acquisition in customary areas using the LAS.

Agriculture has a high share of Gross Domestic Product (GDP), contributing 20% and 30% to GDP in Nigeria and Kenya, respectively (World Bank, 2016). Nigeria's agricultural sector contributes 70% of employment to the labour force, with more than 80% of Nigerian

farmers being smallholders.[6] Land tenure issues and inconsistent support from local government councils are limitations that hinder smallholder farmers (Mgbenka and Mbah, 2016).

The above description suggests that Nigeria's demand for land for agriculture is high. Land is a potential asset for economic growth, food security and the world's most essential resources. Hence the importance of an efficient LAS that manages equitable access to land and its associated resources. Efficient land administration and sound policies are necessary for economic growth, food security and poverty reduction in Africa, where 80% of the population depends on agriculture for their livelihoods (African Development Bank Group, 2010). To reduce the high unemployment rate and associated poverty, customary LAS should be promoted to provide efficient and effective land management based on responsible, pro-poor, and fit-for-purpose principles.

5.2 Sources of Law

Sources of law are categorised as primary and secondary (Humby, Kotze and Du Plessis 2012). Primary sources are laws made by institutions empowered with authority to enact laws, for instance, the power bestowed on the Senate, legislatures, or Judges in court proceedings. Nigeria's primary sources of law are the Constitution, customary law, Nigerian legislation (Statute, Ordinances, decrees, bylaws, and edicts), the received English law (common law), Islamic law, judicial precedents, and international law. Secondary sources of law serve as supplementary authority to provide further clarification to primary sources of law. These include materials produced by lawyers in practice, academia and any other

[6] Small-scale/smallholder farmers are those who farm on less than 2.0 ha, albeit this is only a general definition due to the variability of land potential in terms of soil quality and rainfall (IFAD/UNEP, 2013). "Overall, smallholder farmers are characterized by marginalization, in terms of accessibility, resources, information, technology, capital and assets" (*Ibid.*: 10).

documents that censoriously comment on the contents of the Constitutions, statutes, and judicial precedent.

5.2.1 Constitution

The Constitution of the Federal Republic of Nigeria (CFRN) came into force on 29th May 1999. The preamble of the Constitution stipulates its purpose as "promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and to consolidate the unity of our people" (CFRN, 1999: 1). This preamble addresses the critical issues of good governance, equality, and justice which correlates with the 8R framework of RLM (see section 2.4). The Constitution affirms its supremacy in Section 1 (1-3), stating it shall be binding on all authorities and persons, the country shall only be governed by the provisions of the Constitution, and any law inconsistent with the Constitution is null and void. The CFRN provides the basis for the administrative framework used by the Federal Government of Nigeria, the states, and the local government.

The CFRN (1999) is the country's supreme law based on three distinct systems of law (common, customary and sharia). The Constitution of Nigeria only recognises customary law through the appointment of a judge who is knowledgeable in customary law (see Section 281 (b) of CFRN, 1999). The judge is appointed to head the customary court to oversee all cases involving the question of customary law. The link between customary and statutory laws is not explicitly stated in the Constitution. Additionally, it does not recognise marital property rights and makes little to no provisions for the status of chiefs, monarchs, and elders as well as the rights to culture and traditional institutions (Diala and Kangwa, 2019). Seeing as customary tenure provides a significant source of land access in Nigeria according to Kuma (2017) and Babalola and Hull (2019a), these constitutional shortcomings hinder sustainable management of land in rural and peri-urban areas, as well as the achievement of the Sustainable Development Goals (SDGs).

The CFRN provides the basis for the administrative framework used by the Federal Government of Nigeria, the states, and the local government. The roles of these three tiers of government are explicitly defined in the Constitution. It is stipulated that they work together in harmony in the interest of the citizens. At each of the tiers of government, there are three divisions: the judiciary, the executive, and the legislature. The Constitution upholds the independence of each division, enforcing the separation of powers. Executive bodies are established to govern the three tiers of government. At the state level, the governance structure is complemented by the traditional authorities through the traditional governance structure. However, the provisions for the traditional governance structure are excluded from the Constitution. The exclusion is contrary to what is obtainable in South Africa and Ghana, where the traditional governance structures are included in the respective Constitutions (Ntsebeza, 2005; Ubink, 2008).

5.2.2 Customary law

In Nigeria, customary law entails both ethnic customary law and Moslem Sharia law (Dina and Akintayo, 2020). Ethnic customary law is indigenous law that regulates the activities of different ethnic groups within the customary society in southern Nigeria. Indigenous law reflects the people's culture, values, customs, and habits. It is "described as a mirror of accepted usage" (*ibid*: 3). The indigenous law in the context of this definition is in respect of Yoruba customary law, which directs the affairs within the Yoruba society. Fundamental parts of the Yoruba customary law are its flexibility and adaptability. It can adapt to changing social and economic conditions to meet the needs of the people.

Customary law remains resilient (Alden Wily, 2012a) as explained in section 2.2.2. It is the basis for establishing the Customary court, the lowest level in the hierarchy of courts (Dina and Akintayo, 2020). Yoruba customary law is aimed at reconciliation and maintaining social harmony between two or more disputants. Social harmony is in line with the process of mediation, negotiation, reconciliation, arbitration, and adjudication, which are common

to African methods of dealing with conflict. Here I will term them African Dispute Resolution (ADR). By contrast, the received English law (Common law) of the statutory legal system is about litigation in courts process that, unlike mediation, leads to both winners and losers and may not yield lasting cessation of conflict.

It is crucial to explain the background of contemporary Yoruba society to understand the resilience of Yoruba customary institutions and laws, the suitability of customary forms of land administration using customary laws to the needs of the Yorubas, and the impact of statute law on customary land administration. Pre-colonisation, the Yorubas practised a decentralised system of administration comprising family groups, heads, chiefs, and Obas. The roles of these groups in land administration are discussed in detail in section 5.5.3. The Yoruba system of governance was monarchical, meaning centralised administration ruled by a king (Oba) with the support of chiefs (Salami, 2006). In contrast to the highly centralised Hausa/Fulani system in Northern Nigeria, the Oba is not an absolute ruler *(ibid*). There are checks and balances in the scheme of administration in the traditional Yoruba society. During colonialism, the British used indirect rule to coerce the Yoruba traditional institution into administration (see section 2.2.2).

Moreover, the British appointed warrant chiefs that distorted the administration of the Yorubas. The use of the warrant chief by the British created a disconnection between the state and the people as regards customary law. This disconnection still manifests itself and is observed in the state interventions in customary land administration issues, such as the *Isakole* payment by the customary tenant to the customary landlord. The state failed to amend the controversial provision contained in Section 1 of LUA (1978), which asserts that land is *vested* in the Governor, who shall administer same for Nigerians' benefit.

In solving land-related problems, the Yoruba devise several traditional legal maxims to address social, political, and legal problems. These traditional legal maxims are phrases or

words of wisdom peculiar to solving different problems. Maxim "means a rule or principle of living recognised by a given people as a truth of life which requires no further proof" (Adekunle, 2009: 8). Two traditional Yoruba maxims related to land administration are briefly discussed.

5.2.2.1 *Oba Lonile*- Land belongs to the Oba (Stool land)

Land ownership within the community is vested in the Oba. The chiefs and different family heads represent the Oba to hold such land in their respective jurisdiction. In the instance of a dispute, the Yoruba judicial system recognises the family head as the first point of settlement. Each complainant brings their case before the head of the family. When the family head cannot settle the matter, the issue is brought before the Chief in charge of that area of the town (Lloyd, 1962). If the chief fails to negotiate peace between the disputing parties, the case is transferred to the *Igbimo Ilu* (Town Council Elders). The Oba then presides over the matter in the Council of Chiefs and Elders (*ibid*.). In land alienation, the head of the family owning the land is notified by the king's representative before such land can be transferred to another party (TA1, TA2, TA3, 2021). When the land in question is community land, the consent of the chiefs or Oba is sought before such land can be granted to any person (see also section 5.5.3; TA1, TA3, 2021).

5.2.2.2 Landlord (*Eni A Ba Laba Ni Baba*)

The traditional legal maxim *Eni A Ba Laba Ni Baba* relates to the precedence of the first settler: the first to settle a place is the 'father' of the place. This maxim further confirms the land ownership right to the first settler as the landlord of any other people who later join them. In addition, this maxim helps us to understand why tenants must pay tribute to their landlords for using such land. This tribute is usually in the form of '*Isakole*'.

5.2.2.3 Boundary demarcation (*Nkan nje ti enimeji ko ma laa ala*)

This maxim relates to boundary demarcation which stipulates that there is always a clear demarcated boundary for every landowner. This maxim further confirms that there is no

land without a physical boundary even when the land is not registered in a formal land registry.

5.2.2.4 Do not remove the ancient landmarks

This maxim indicates that every land has ancient landmarks used for demarcation. Such ancient landmarks are natural features such as 'peregu' and etched stones used in indicating a boundary line between two people, districts, or nation. Removing an ancient landmark is a serious violation of customary law which is punishable. See also Proverbs 23:10.

5.2.3 Legislation

Laws made through legislation are referred to as statute law (Malemi, 2012; Fisher and Whittal, 2020). These laws are passed by the legislature and enacted by the signature of the President (Malemi, 2012). Common law remains an essential part of Nigerian law. Statutory enactments are the basis of Nigerian law in the form of "law-making and law reform" before and since independence (*ibid*: 32). Unlike customary law or common law, which are not codified, legislation is enacted in written form. A legislative procedure must be followed by the National House of Assembly and the State House of Assembly before such laws can be passed (ss 58-60; 100-101 CFRN, 1999). The legislative procedure requires three readings on the floor of the House, good debate on the contents of the laws and bills, and two-thirds votes of the members of the house before such a law can be passed.

The Senate is made up of the upper and the lower House. The upper House is the National House of Assembly, and the lower House is the House of Representatives. The senators represent senatorial districts in the National House of Assembly State seats. The members of the House of Representatives represent the Federal constituencies in the State seats in the lower House. The State has a single House. The State House of Assembly makes laws to govern the State. In a situation where a state makes a law inconsistent with a law made by the National assembly, the law made by the National Assembly shall prevail (Section 5 of

CFRN, 1999). When the National House of Assembly passes the law, the law is sent to the President for signature. The same applies to the state Governor. In the instance where the consent is refused, the senators have the power, within the ambit of the Constitution, to secure the majority votes of members of the upper and lower house to pass the bill into law (ss 58(5), 59(4), 100(5) CFRN, 1999).

Statutory laws are legally superior to customary and common laws, with the statute and common laws being part of the Constitution. The National Acts of the Senate (Acts of Parliament) are the highest in the hierarchy of Acts, followed by state laws and bylaws.

5.2.4 The Received English Law (Common Law)

The Nigerian legal system follows British law, which the Constitutional Republic adopted upon independence. The following local statutes of England allow the application of English law in Nigeria (Malemi, 2012):

- English law in the Colony of Lagos Ordinance No 3 of 1863
- Supreme Court Ordinance No 4 of 1876 applied to Lagos Colony, Supreme Court Proclamation Ordinance No. 6 of 1900, and later the Supreme Court Ordinance No. 6 of 1914, now the Supreme Court Act 2004
- Court of Appeal Act and the Federal High Court Act (Court of Appeal (Amendment) Decree No 65 of 1993 and No. 13 of 1973)
- The High Court laws of the states
- Interpretation Act (Chapter 192 LFN, 1990).

The elements of the English law introduced into Nigerian law are the common law of England, equity, and the statutes of general application in force in England on January 1, 1900 (*ibid*; Anyim, 2019). Several varieties of these laws exist today as re-enactments as local statutes, while others have been repealed (Malemi, 2012).

5.2.5 Judicial precedents

When verdicts are passed in any court proceedings, the decisions (including the judges' reasonings) are legal references. These judgements are referred to as judicial precedents, case law, or doctrine of *stare decisis*. Case law is based on *stare decisis*, "the practice of standing by, following, or applying earlier decisions" (Malemi, 2012: 36). Offering that the case at hand is analogous to the earlier suit or cases identified. The doctrine of *stare decisis* is a principle of English law that states that *precedents* are authoritative and binding, except if there is a valid reason(s) to deviate from them. When there are no judicial precedents in a matter, the judge's decision sets a judicial precedent that will inform subsequent judgements.

Since the 19th century, the order of precedence established in England has likewise been incorporated into the Nigerian legal system such that the decisions of higher courts are binding on the lower courts. The Supreme Court in Abuja and the Courts of Appeal in the various states commanded the respect. The verdicts of the Supreme Court are binding on all other courts in Nigeria, except in situations where the Supreme Court overrules a decision already taken. See Figure 5-1 and Table 5-1 for the order and process of courts in Nigeria. All these courts are superior courts of record except the last two in orange, which are minor courts of records.

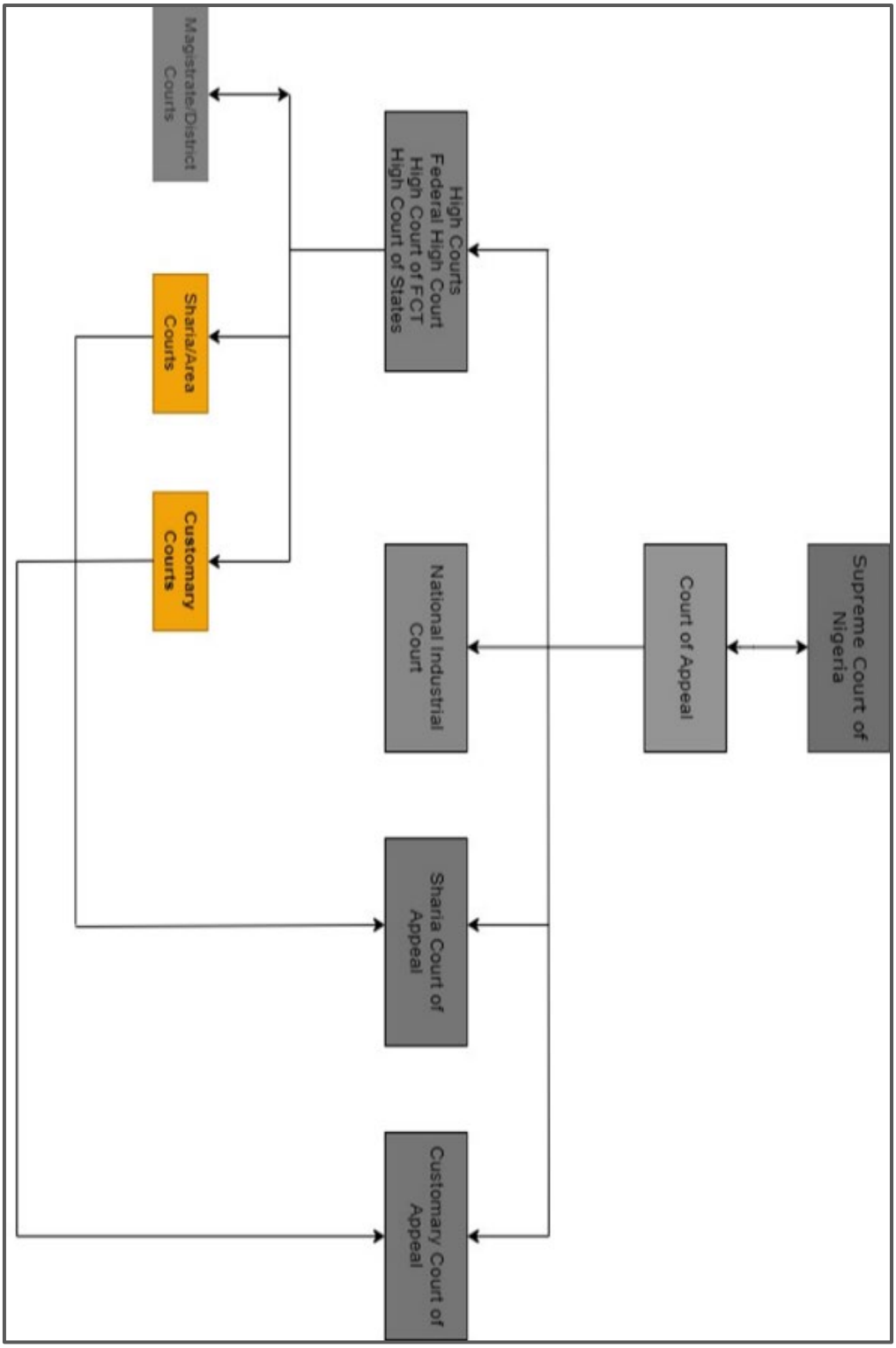

Figure 5-1: Hierarchy of Courts in Nigeria

Table 5-1: The Law courts, their order and authority in Nigeria

Court Name	Order of Courts Authority
Supreme Court	Decisions are abided by all courts in Nigeria, except itself. It may choose to follow the earlier decision and may not with a valid reason. Supreme Court shall have exclusive jurisdiction over any other court in Nigeria (Section 233 CFRN, 1999)
Court of Appeal	Decisions are followed by itself and all lower courts in Nigeria. Two instances where it may not be bound by its decision: two conflicting decisions of its own and not over-ruled decision. Appeals can be made from Federal High Court, the High Court of Federal Capital Territory (FCT), Abuja, High Court of a State, the Sharia Court of Appeal of FCT Abuja, Sharia Court of Appeal of a state, Customary Court of Appeal of a state, and from other tribunals or court-martial as prescribed by an Act of the National Assembly (Section 240 CFRN, 1999).
Federal High Court	As per Section 252 (1) of the CFRN, it shall have all the powers of the High Court of a state. To effectively exercise its jurisdiction additional powers may be conferred as may be necessary or desirable (2). Bound by its own decision.
High Court of a state	As per Section 272 of the CFRN, it has jurisdiction to hear and determine civil and criminal proceedings, either the one that originates in the High Court of a state or brought before it in its exercise of supervisory jurisdiction. However, in a state without a customary court of appeal, the appeal goes to State High Court. It is bound by its own decisions.
National Industrial Court	Provided under Section 254C (CFRN, 1999) NIC shall have and exercise exclusive jurisdiction in civil cause and matters as it relates to labour employment, Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act, and any other matter relating to Labour. Matters decided are exclusive to the court. Appeal to the Court of Appeal is entertained as a right (Subsection 6).
Sharia Court of Appeal of a state	As per Section 277 (CFRN, 1999), Sharia Court Appeals of a state shall exercise appellate and supervisory jurisdiction in civil proceedings in the determination of Islamic Law. Sharia Courts are in Northern Nigeria.
Customary Court of Appeal of a state (CCAS)	Section 282 (1) of CFRN (1999) states that the court shall have appellate and supervisory jurisdiction in civil proceedings in matters relating to the determination of customary law. The establishment of the customary court of appeal is based on a state that requires it (Section 280 (1)).
Magistrate/District Court	Their decisions are not binding on any other courts and are not required to abide by their earlier decisions. This is the only court not prescribed under the Constitution, but it is established by the law of the State House of Assembly.
Customary/Area/Sharia Courts	This is the lowest in the hierarchy of courts in Nigeria. The Nigeria Constitution has no provision for this court. The state house of assembly is obliged to provide the laws to govern these courts.

5.3 Classification of Law

Distinguishing the different sources of law brings the classification of law to the fore. Type of law is important for the following reasons (Curzon, 1990: 17):

- it identifies the relationship between different laws,
- it determines the order of different types of laws within a state, country, or geographical entity, and
- it provides for understanding the study of law in its simplest form.

5.3.1 International law

The law regulating the legal relationship between sovereign nations is called international law. It emanates from the consensual rules developed from the customs and practices that sovereign nations agreed to guide their relationships (Malemi, 2012). International law consists of bilateral and multilateral agreements that bind the relationships between sovereign states (*ibid*). The various means of enforcing international law include (*ibid*: 15): economic sanctions, severance of relations or ties, the passing of a resolution or vote of censure or condemnation, arbitration by the International Court of Justice, and use of force, such as military action or other measures.

5.3.2 Municipal laws: substantive and procedural laws

Municipal law is the law of a nation, such as in the case of Nigeria, which is the law made by itself (for example, the LUA of 1978). In South Africa, municipal law is called national law since it can be confused with the by-laws passed by local government structures called municipalities there. In Nigeria, as in other countries, municipal law (sometimes called national law) may be split into substantive and procedural law.

Substantive law relates to private and public law, and it establishes, describes, and controls the rights and duties of persons, stipulating which conduct is lawful or unlawful. The courts administer the rights when breached. In this instance, substantive law defines rights,

restrictions, and responsibilities (RRR) and is stipulated in the land law of the nation. *Private law* is a branch of substantive law concerned with the legal relationships of individuals, corporate bodies, and the association of persons. Examples of *private law* include consumer protection law, family law, the law of torts, contract law, the law of succession, inheritance and wills law, the law of property, and the law of trust, among others. *Public law* primarily concerns the structure and organisation of the state, country or given geographical entity. Public law includes municipal and international law, administrative law, constitutional law, criminal law, the law of evidence, and mass media law (see Figure 5-2).

Describing the vertical and horizontal relationships between public and private law, Fisher and Whittal (2020) show that vertical relationships are between the state and the people, while horizontal relationships are between persons and persons. Figure 5-3 illustrates that public laws, that is, laws governing the operations of the state and state entities, have a vertical relationship with people. In contrast, private laws govern the horizontal relationship between persons (natural or juridical). Procedural, adjective, or remedial laws stipulate the processes of enforcing substantive law. In the case of breach of substantive law, procedural law shows the process and methods to be adopted in enforcing rights and remedies for the violation. Two procedures in law are civil law and criminal law, and any of these two apply to this study. The law of evidence is vital in determining land cases and matters.

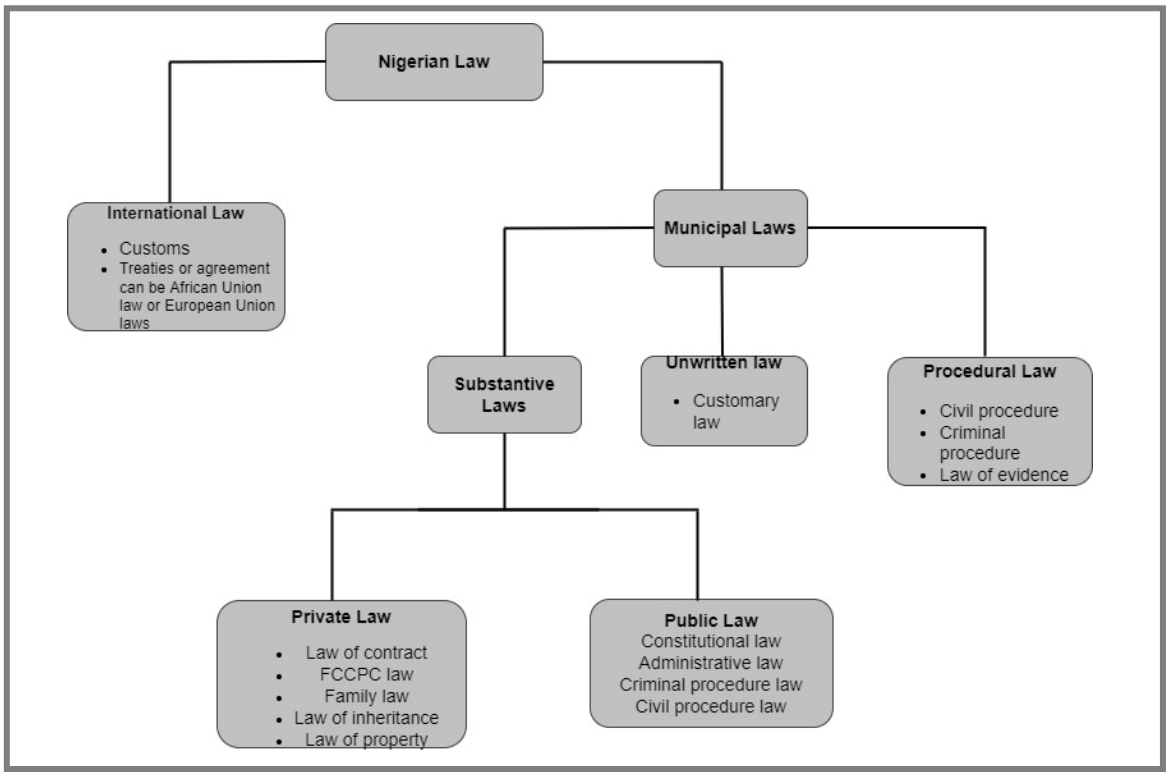

Figure 5-2. Classification of Nigerian Law

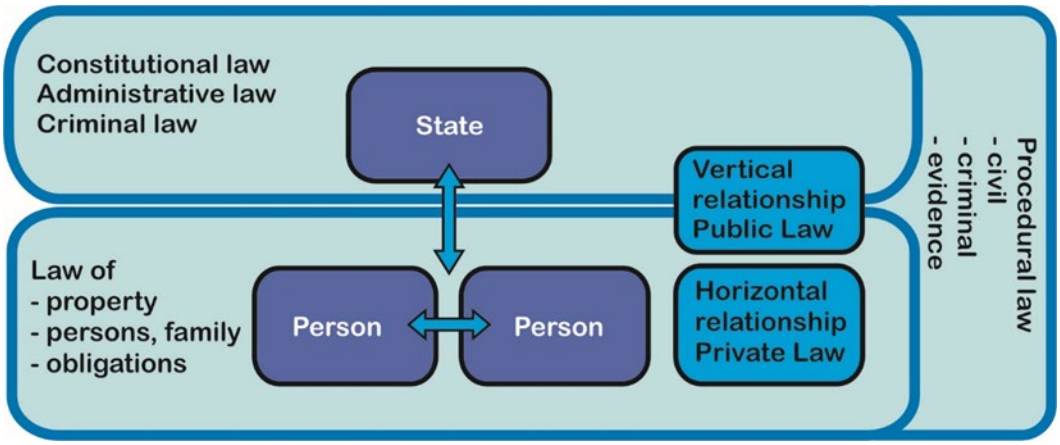

Figure 5-3: Vertical and Horizontal Relationship in Law (Fisher and Whittal, 2020: 176 used with permission)

5.4 Land Tenure System in Nigeria

Like many SSA countries, Nigeria has a plural system of tenure comprising customary and statutory tenures. The two tenure systems run parallel to each other, with the customary tenure system in the rural and peri-urban areas and statutory tenure systems in the urban areas (Ajibade, 2015; Babalola and Hull, 2019c). The tenure system can be further

subdivided into a communal land tenure system, inheritance tenure system, rent tenure system, gift tenure system, the leasehold tenure system, and freehold tenure system (Agu, 2018; SEVICPDC, 2019). The last three are statutory tenure systems, with the first four classified as customary tenure systems. A distinction between leasehold tenure and tenants at the government's will is that the latter cannot be used as collateral for a loan (SEVICPDC, 2019). In the customary system, the family head and traditional institutions hold the land in trust. However, the land is owned by the state. Ownership of land by the state is supported by the nationalisation clause in the LUA of 1978. The seven land ownership types in Nigeria's current tenure system are explained below.

Communal land – These are lands vested in the family as a corporate entity or community leaders holding land in trust for the people under Yoruba customary law and usage (living customary law). The landholding group is the family, clan, village, or community (Onwuamaegbu, 1966; Onakoya, 2015). This land holding system is where the whole family jointly holds land (Onakoya, 2015). No single member of the family can transfer its title to any other person (Utuama, 2012).

State land - This is land acquired by a state in the interest of the public, which includes land that belongs to the federal, state, and local governments, respectively. Under the LUA (1978), the Governor is empowered to acquire any land within its state's jurisdiction for the overriding public interest (Section 28). Such acquisitions are documented in a gazette, which indicates the extent of land acquired and for which purposes (public interests). Public interests relate to development and utilisation that benefits the public in general, such as public health, public safety, mining purposes or oil pipeline installation, and defence (Section 28 (b)(c)). The absolute interest of such land is vested in the state's governor.

Family land - This is customary land vested in families with common lineage who have acquired the land through inheritance, purchase, or long settlement. Family inheritance, in this case, is always through the patrilineal line. No member of the family has "disposable

interest on the family property either during his lifetime or under his will" (Onakoya, 2015: 221).

Private or individual land - This land has been acquired independently as private property, and the mode of acquisition is either inheritance, purchase, or a gift. The rights enjoined are not restricted by community or family permissions or limitations. However, the holder may enjoy freehold or leasehold rights over their land.

Stool Land - This is a form of absolute land interest vested in the office and not the individual officeholder. The land, in this case, is permanently attached to the office. The land was attached to the offices of the Obas in the South and the Emirs in the North.

5.5 Customary and Statutory Tenure Systems

5.5.1 Landholding, rights, and interests in the customary tenure system in Nigeria

Customary tenure is the primary source of all landholdings in Nigeria, providing land for residential, agriculture and other economic activities for many Nigerian citizens (Ike, 1984; Myers, 1991; Kuma, 2017; Ghebru and Girmache, 2018; Nelson, 2019). Land among the Yorubas is a source of sustenance, power, freedom, and authority in social interactions (Onakoya, 2015; Agheyisi, 2019). The customary land tenure system relates to family landholding, inheritance, groups, and communal landholding. Under this type of landholding, access to land resources for individual use is guaranteed. This system of landholding is indigenous to Nigeria (Smith, 2007). The prominent feature of the customary land tenure system is that "land is an ancestral trust which the living shares with the dead; hence land is inalienable" (Amankwah, 1989*)*. In Nigeria, customary landholding systems differ from culture to culture, but they have commonalities.

Two distinctive features of the customary land tenure system were highlighted in Omotola (1982): 1) the basis for traditional ownership of land under customary tenure is joint ownership, and 2) the unique position enjoyed by Oba, chiefs, and heads of families. The question of whether the LUA had usurped the customary land tenure system will be

discussed in this section. Section (50) of LUA of 1978 defines the customary right of occupancy as "the right of a person or community lawfully using or occupying land by customary law and includes a customary right of occupancy granted by the Local Government under the Act" (LUA, 1978). It is against customary law and traditions for a statutory body to grant the right of occupancy in the customary land tenure system and still claim that the rights are to be enjoyed by customary law (Omotola, 1982).

Household rights to land are common in the southern part of Nigeria in the customary land tenure system. When the community head allocates land to any family member, the land remains with them and is passed on to the next generation through the male lineage. Communal land was vested in the stool, presided over by an Oba and the chief before the promulgation of the LUA. With the enactment of the LUA of 1978, this power bestowed by customary institutions seems to have been eroded (Omotola, 1982; Babalola, 2018).

'Tenant farming' is the standard practice in the customary land tenure system: the land is acquired from the community head for farming purposes by a group of people from a different town. They are required to pay an annual tribute to the community head, which makes land available to outsiders under communal rather than statutory land tenure (Knox, 1998).

The practice of 'patrilineal inheritance' is common to all ethnic groups in Nigeria. After the death of the head of a household, the land is shared equally among the male children of the family or passed to the eldest son of the family, depending on the customary practice. Women are not entitled to land except in cases where there is no male child in the family. This landholding method in the customary land tenure system is identified as the cause of land fragmentation and low productivity (Knox, 1998; Alden Wily, 2011).

Customary tenure held jointly by communities is converted into rights of occupancy via sections 34 and 35 of the LUA, which can be enjoined through customary or statutory rights of occupancy. The local government grants a customary right of occupancy to land in rural

areas (Section 6(1) of the LUA, 1978). These landholding rights are common in southern Nigeria, especially among the Yorubas.

Figure 5-4 shows the process of the conversion of absolute ownership into rights of occupancy under statutory institutions of land administration. There are eight sections in the diagram showing the activities that takes place at each of these sections. The sections starts with applicant's activities and end in the Deed's office. The procedure is too lengthy. It takes 35 procedures and 274 days to complete the entire process. This is the reason why most of customary land remained unregistered (Chigbu and Klaus, 2013).

Customary tenancy are contractual arrangements between the customary landlords and customary tenants. This is when a person is legally empowered to permit land use to another, usually a stranger (i.e., not a member of the land holding). Permitted uses include the right of possession or use of the land for either a particular or an indefinite period and for a specific purpose with the sole aim that the land reverts to the original landholder after completion of use without anything altering the size and shape of the land (Onwuamaegbu, 1966; Achimugu, ND; Ewere, 2016). Several tenancy agreements exist as gratuitous, service, share kola, cash, or rent-bearing tenancies (Agbosu, 1983). The decision to use any tenancy arrangements depends on the tenurial practice in the customary area. A customary tribute is paid yearly to the landlord as a form of rent for land use (*ibid.*).

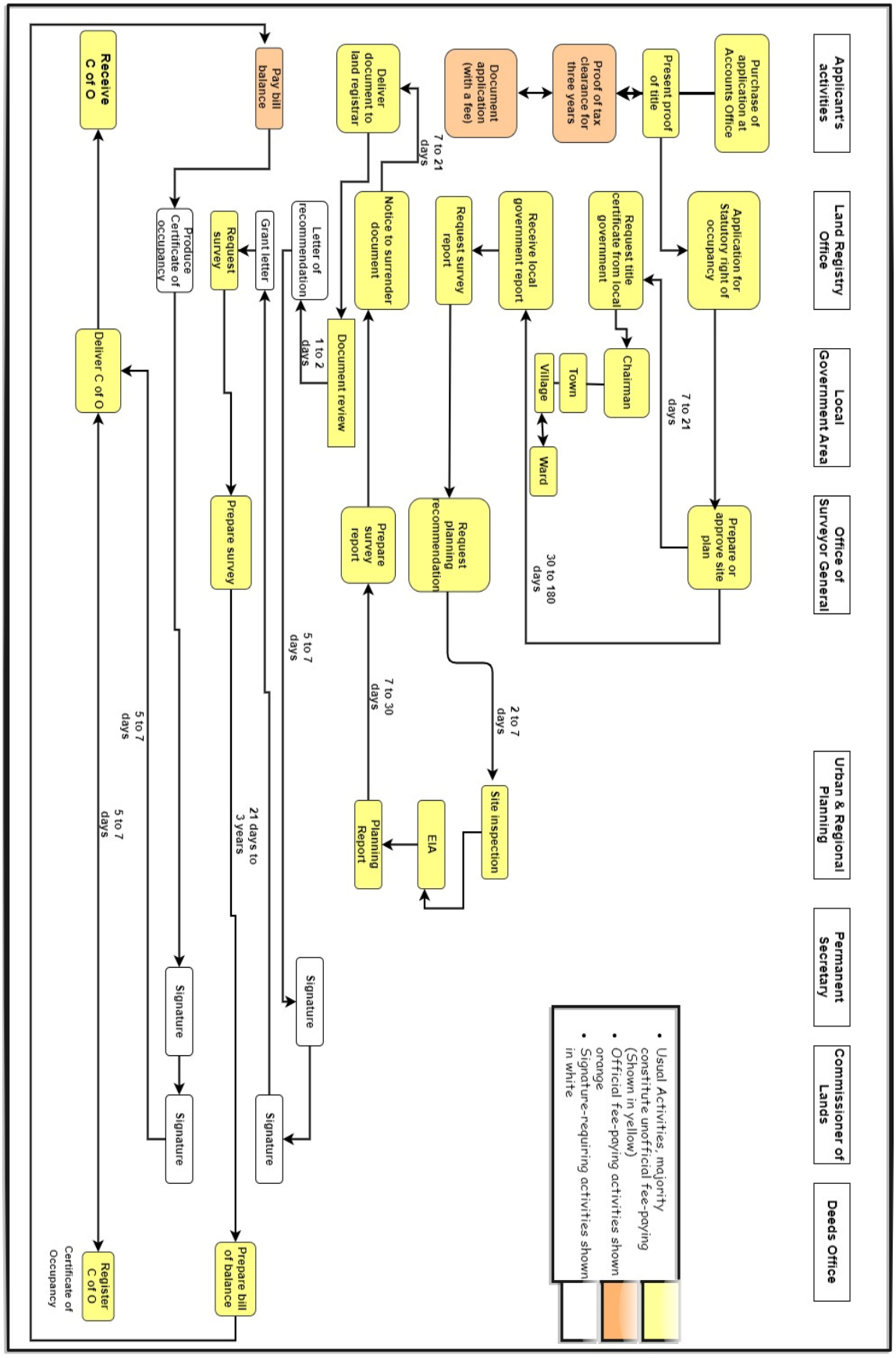

Figure 5-4: Conversion of Absolute Ownership into Rights of Occupancy (Adapted after Butler, 2009)

The customary pledge is when an occupier or owner gives rights of possession in place of a loan to a creditor until they finally pay back their debt. When a pledger cannot repay their loan, a pledgee is not empowered under customary law to sell the pledged land (Bacon, 2008). Bacon (2008) defines a customary pledge as "a temporary license given to the pledgee who must give back the land as far as possible in the original form it was taken, unencumbered in any way". Tree crops can be pledged differently from the land or reserved to the pledgor; the pledgee can only plant food or subsistence crops; no permanent structure can be constructed by the pledgee (Onwuamaegbu, 1966). The main characteristic is "ultimate redeemability" (*ibid*.; Ike, 1984: 475).

Alienation in Yoruba customary law and alienation concerning family land means any transfer of family land, which includes, and is not limited to, sale, lease, mortgage, pledge, or whatsoever form that land can be transferred from one person to another (Smith, 2007). Two simple rules still exist: 1) the community head does not alienate without the consent of the family, and 2) a sale by a member of the family with which the head of the family is not in agreement is null and void (Achimugu, ND). See section 5.5.3 for further discussion.

All the above rights associated with the various forms of landholding tenure cannot co-exist on the same piece of land because of the distinct nature of each of the rights. For example, a customary tenant cannot decide to pledge the same land to another as they will violate the contractual agreement with the customary landlord. At the same time, neither the customary tenant nor customary pledgee can alienate any portion of the land. However, some rights are compatible on the same piece of land; for example, dwelling rights and forest harvesting rights may be possible on the same land.

5.5.2 Customary tenure in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti

Customary groups comprise a large proportion of land in peri-urban areas of Ekiti State (TA1, TA2, TA3, TA4, TA5, 2021; Babalola and Hull, 2019a). This customary land is managed and administered by traditional leaders of community heads, chiefs, and family heads using

customary law in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti (TA1, TA2, TA3, TA4, TA5, TA6, TA7, TA8, TA9, 2021). Neither the customary law nor the role of traditional leaders in local land management is recognised. The Constitution provides a vacuum in identifying chiefs. It allows the state to use its power to determine the recognition or non-recognition of chiefs in their respective domains.

The lack of constitutional recognition of customary tenure and the role of traditional authorities impedes local land administration in peri-urban areas of Ekiti State. This is unlike what is noted in Ghana, Kenya, and South Africa, where customary tenure and the role of traditional leaders as custodians of the ancestral land is customarily and constitutionally recognised (Ubink, 2008; Akamba and Kwadwo Tufuor, 2011; Alden Wily, 2018b). These countries have also recognised customary law to govern land administration in peri-urban areas (*ibid*). The social, cultural, and economic powers of traditional authorities in Nigeria are affected due to the distortion of African chieftaincy during the colonial period. This peculiarity of lack of constitutional recognition of traditional leaders makes Southwest Nigeria an appropriate country for this study. Despite the lack of constitutional recognition, Obas, as a form of traditional authority, are still powerful, with powers distributed according to their grades (see section 5.7).

Each community member has usufructuary rights for farming and residential purposes. These usufructuary rights translate to a usufructuary title to the land. The usufructuary title can be transferred through inheritance, sale, or gift (TA4, TA5, TA6, TA7, 2021). The traditional authorities do not have the power to deprive a community member of their usufructuary rights or interests in land.

5.5.3 Traditional control of land in peri-urban Ekiti State

According to the LUA's statutory legal framework, land ownership is vested in the governor of the state holding it in trust for the people, which brings into effect two forms of title: legal and equitable (see Babalola and Hull, 2019a). The legal title is vested in the Governor, while

the equitable title indicates the title is vested in people other than the Governor (Abugu, 2012). It appears vague to say the land is vested in the Governor to hold in trust for the people when, in reality, this role is actively performed by the family head, chiefs, and Obas. Amodu Tijani v. Secretary to the Government of Southern Nigeria (1921) stated that the chief is a trustee or holds the position of a trustee. Illustrating customary land law in Ghana, Woodman (1996) says that the word 'trustee' is a common-law term indicating the existence of a trust whereby legal title is vested in a trustee and equitable title to the same property is granted in another. The word 'vested' in Section 1 of the LUA is used to control land in the peri-urban areas as the government acquires land at will, believing the same is vested in them. The phrase 'vested trustee' is unknown to customary law, which never distinguishes between legal and equitable title to land. Under customary law, the land is held by the family head and traditional leaders. It will be correct to say the land should be vested in the community that holds the land.

The areas around Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti, encompassing local government headquarters within Ekiti State, display mounting pressure on land because of urbanisation and population growth. Customary land is sold to outsiders due to the rising demand for land for residential purposes resulting in tenure insecurity among community members needing this land for subsistence farming (TA2, TA3, 2021). Most of the agricultural land is lost in the pace of large-scale land acquisition by the government and the dispossession of land by the Oba, family head, and chiefs (SA1, SA2, TA5, TA6, 2021). The large-scale land acquisition and the dispossession render the community unable to produce food and generate income for their livelihoods. Urbanisation exacerbates the cost of living daily, i.e., people moving from rural into peri-urban areas. The situation causes peri-urban poverty as local people cannot compete for a plot of land with outsiders.

The government may acquire land for public use, such as schools, local government headquarters, hospitals, maternity wards, post offices, courts, etc. Inadequate compensation is paid for many of these lands; where they are compensated, it is insufficient

(TA1, TA3, TA6, SA1, SA2, SA3, 2021). Recent studies identifies the deficiency in the provisions of compensation in LUA of 1978, which stipulates payment for land improvement (see Ibiyemi, 2014; Babalola and Hull, 2019a), resulting in no compensation for land without improvements. In several rural and peri-urban areas, no amount of this money is committed to community development. The urbanisation of the peri-urban areas causes the same plot to be sold to different buyers, creating conflict, and making buyers vulnerable.

The demand for land for residential and public purposes resulting in the conversion of agricultural land causes tenure insecurity for subsistence farmers (*ibid*). This insecurity is also noted in other rural and peri-urban areas in Nigeria (Haruna, Ilesanmi, Yerima, 2013; Osabuohien, 2014; Obayelu, Arowolo and Osinowo, 2017; Bridger, 2016). As per Bridger (2016), evidence from the peri-urban area in Ado-Ekiti showed the displacement of poor subsistence farmers on the grounds of establishing an airport. Alden Wily and Hammond (2001: 44) state that the "curtailment of communal property rights, through a form of feudalisation of land relations" describes the problem of land in peri-urban areas. Against the current crisis in customary land administration, international land policy initiatives are geared towards an interest in customary tenure systems. Nigeria's current land policy does not resonate with international developments. One such lack of compliance is the non-recognition of the customary tenure system and suppression of customary law leading to what Ubink (2008) termed 'negotiability' of customary tenure. Negotiability results because of the lack of equity and security in land governance.

Scholars and policymakers are concerned about the issues of equity and security in the governance of land and natural resources and the appropriateness of customary and statutory tenure systems to provide rights of access to land for the vulnerable and the poor (Ubink, 2007). Land tenure reforms in Africa have tried to change the existing customary structures with the sole aim of reconfiguring customary law (Bruce and Migot-Adholla,

1994; World Bank, 2003b; Alden Willy, 2012a).[7] Social and political relations describe customary land tenure, resulting in diverse, overlapping and competing claims (Ubink, 2008). A contested terrain emerged as property regimes were seen and analysed in negotiation (Berry, 2002; Juul and Christian, 2002).

Most of the peri-urban areas of land are customarily held. Customary law is used to regulate these lands. The allodial title to every community land is owned by the community members and is supported by various customary laws and case laws in textbooks (Malemi, 2012). The traditional institutions are only customarily obliged to administer land but constitutionally not recognised despite the land being customarily held.

5.5.4 Alienation of interests in customary land

Rights in customary land can be alienated or transferred through different means. In customary Nigerian tenure, several types of land alienation can be identified. These are inheritance, gifts of land, sale, pledge, borrowing, and leases. Tradition is the basis for such a transfer, coupled with the socio-economic activities of where the land is located. Customary land can be transferred to strangers; however, the simple principle is that neither the family head nor the principal members can alone validate land transactions (Onakoya, 2015). Strangers are the people who are not indigene of a peri-urban area. The practices and procedures require that, before family land is alienated, the consent of the family head and principal members must be sought; whoever becomes the recipient of family land, whether a stranger or indigene, is required to offer some customary acceptance (giving of kola nuts). Where land alienation is performed without the consent of the family head and principal members of the family, the legal validity of such land is null and void (Coker, 1958; Onakoya, 2015).

[7] See also Section 2.2.2 for asserting the resilience of customary structures in land administration.

5.6 Customary and Statutory Law, Tenure and Administration

The LUA empowers each Nigerian state governor to administer land in urban areas. Local Government Areas (LGA) in Nigeria are sub-divisional governance areas within each state. Each LGA is managed by a Local Government Council (LGC) headed by a Chairman (Chief Executive of the LGA). Other elected members are referred to as Councillors. See Figure 5-5 for governance structure in Nigeria. In the diagram, the next rank to each executive position is indicated to the right of the chart. For instance, the president is assisted by the vice president. Local governments are empowered to administer land in rural areas (Section 6 (1) of LUA, 1978). The legal, organisational, and institutional frameworks for land administration in Ekiti State, Nigeria, are presented in the following sections.

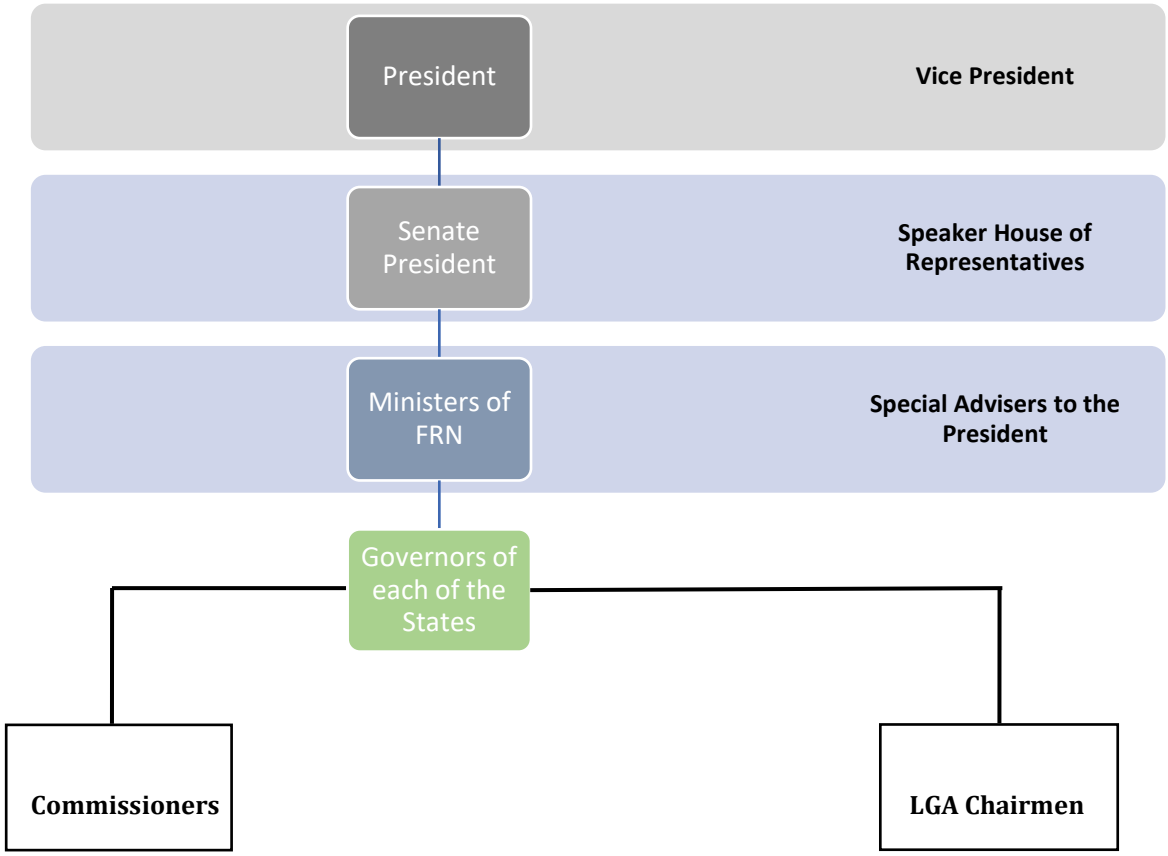

Figure 5-5. Structure of Governance in Nigeria

5.6.1 Land administration systems and their legal frameworks

In the pre-colonial era, land administration and management were recognised as the sole responsibility of the indigenous people (Ghebru *et al*. 2014; Ghebru and Okumo, 2017). Land rights holders in the southern region had inalienable rights administered through

customary land tenure, while alienable rights were administered through customary tenure in the northern areas. The Royal Gandayes of the northern part managed the Gandu system and were responsible for land management (Mamman, 2004). With the commencement of colonisation by the British in the early 1900s, land administration and management were streamlined by enacting legislation. In post-colonial Nigeria, multiple tenure types exist, with several government interventions to streamline and unify the land tenure system. The land policy was enacted as the LUA of 1978 with the twin objective of equitable land distribution and efficient land administration (Amokaye, 2011). However, this government intervention in land administration limited the recognition of customary land tenure and removed the indigenous institutions from land administration. The government uses the statutory framework to amass land for itself (Bello, Sodiya and Solanke, 2015). The land policy nationalised land in the hands of the state governor (Sections 1 and 2(1a) of LUA, 1978). The following sections discuss the pre-colonial, colonial, and postcolonial interventions in land administration.

5.6.1.1 Pre-colonial legislative interventions in land administration

Traditional institutions play an important role in LASs, with customary land tenure as the source of land access in southern states in Nigeria. The customary land was held as communal lands, stool or chieftaincy lands, family lands, and individual or separate property (Dosumu, 1977; Aniyom, 1983). Land was not owned by individuals but by communities and families holding land in trust for all family members (Omuojine, 1999). Udoekanem, Adoga, and Onwumere (2014) state that "the legal estate under customary land tenancy is vested in the family or community as a unit" (*ibid*: 182).

Individual or proprietary interest comprised lands of the entire community administered by traditional leaders. The chieftaincy and stool land are expected within the Yoruba ethnic group and include the Oba's place and the surrounding lands. In contrast, the family lands were vested in the family as a corporate group. Individual property is the land whose title was vested in individuals because of the subdivision of family land and the transfer of rights and interests to individual family members. However, the alienation of land held under

customary tenure is prohibited because such acts can hinder future generations from accessing land (Bardi, 1998).

5.6.1.2 Colonial legislative interventions in land administration

In the late nineteenth century, the British colonial administration was introduced in Nigeria. In 1861, the British signed a Cession Treaty to transfer the sovereignty rights to manage land to the British. The Treaty was signed under Oba Dosunmu who was then the King of Lagos. Elias (1971) argued that the legal implications of the 1861 cession treaty were that the root title of the land comprised in the Treaty was passed to the British crown. However, the indigenous people still held individual land rights in southern Nigeria. The colonial statutory intervention started in land administration because of the inability of land alienation and acquisition for public uses under customary land tenure. To boost the economy and release land onto the market, the British adopted the "principle of transformation" (James, 1987: 12). This principle emphasised the systematic conversion of communal titles into individual titles and the replacement of uncertain customs by statutory law (James, 1987). Two interventions were enacted through legislation, proclamations, and policies. First, in 1868, the *Land Title Ordinance* was enacted. This ordinance is used to resolve land claims in Lagos and to authenticate the titles of landowners, holders, and occupiers, which formed the basis for the grants of land made by the Crown between 1863 and 1914 (Nwabueze, 1972). The second intervention was the *Swamp Improvement Ordinances* of 1863 and 1877 to improve swampland (*ibid.*).

Between 1900 and 1950, several laws were enacted to introduce individual land rights, which affected land administration in rural and urban areas (Udoekanem, Adoga and Onwumere, 2014). These laws were for specific jurisdiction and purposes. For example, the *Land Proclamation Ordinance 1900,* enacted by Lord Lugard, was meant to abolish the institution of family and collective land holding, enabling the acquisition of title to land through the High Commissioner. The *Land and Native Rights Proclamation* No. 9 of 1910; The *Niger Lands Transfer Act* of 1916; The *Public Lands Acquisition Act* No. 167 of 1917;

Native Lands Acquisition Ordinance No. 32 of 1917; *State Lands Act* of 1918; and the *Town and Country Planning Act* No. 4 of 1946 are further examples.

The colonial influence differs in southern and northern Nigeria. In the south, legislation was enacted for rural and urban areas to control and manage land. For example, the *Native Land Acquisition Ordinance No. 32 of 1917* aimed to prevent non-indigenes from acquiring land from the people of the southern provinces of Nigeria. Section 3 (a) states, "No alien shall acquire any interest or right in or over any lands within the protectorate from a native, except under an instrument which has received the approval in writing of the Governor." The traditional governance structure was co-opted into land administration using an indirect rule. Two forms of land governance were experienced in southern Nigeria: rural and urban land administrations now differ in all respects. The governor regulated land tenure and administration in southern Nigeria with a statute vesting general control and management. The rural/urban land administration difference encouraged the development of the plural tenurial system.

Economic interest and land governance were central to British rule, which was accomplished by regulating land management and revenue by vesting ownership and administrative control in the state. Although the colonial government's minority rule was used in conjunction with traditional leaders through indirect rule, it was less important in the greater scheme of things.

In the southern region, the inclusiveness of traditional leaders created an avenue for them to consolidate their political control, including land control. For instance, the 'Obas' (community head in Yoruba culture) were deemed custodians of the communities and their resources. They still dominate today in customary territories. The split of customary law into 'living' and 'official' customary law was an additional and important effect of colonialism. Diala (2017) argues that the coexistence of customary and statutory laws makes the latter adapt to the former; these adaptations produce living customary law (Diala, 2017).

In sum, the introduction of statute laws encouraged land fragmentation and speculation, which increased the insecurity of title to land and uncertainties of interests in land (Ukaejiofo, 2008; Atilola, 2010; Otubu, 2014). In addition, there was the confusion brought into LAS, with communal land vested in the state.

5.6.1.3 Post-colonial legislative interventions

Many legislative interventions were undertaken to manage customary and statutory land inherited from the colonial government. The local government, under whose jurisdiction most customary land tenure falls, experienced four significant epochs in the development of the local government system in Nigeria (Abdulhamid and Chima, 2015). The first epoch was from 1903 to the 1950s, based on the traditional administrative system of the colonial administration. The second to the fourth epochs fall under the post-colonial interventions in the local government system, namely 2) the more liberal and participatory approach to local governance; 3) the advent of military rule, which replaced the model of grassroots participatory democracy with militarian centralisation and a 'unity of command' scheme; and 4) the comprehensive reform of local government administration in 1976 which restored liberal, participatory values (*ibid*: 182). The Local Government Ordinance of 1950 started the second epoch with a more liberal and participatory approach to the local governance, which set the scene for a democratic system of local government (Ogunna, 1996).

The Constitution transferred to the state the responsibility of enacting laws to govern the local government. The result of this change is that the legal framework does not recognise the local government as the third tier of government (Abdulhamid and Chima, 2015). Section 7 (1) of the 1999 Constitution states that the:

> *… system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance, and functions of such councils.*

Thus, local government is undermined by the federal and the state government, with the associated weakening of the traditional leaders. The provision of the Constitution gives the state control over all the resources within the local government area. The second schedule of the 1999 Constitution describes two types of legislative power: Exclusive Legislative List and Concurrent Legislative List. The former describes the federal responsibilities, while the latter describes the federal/state responsibilities. The local government was further undermined without recognising its duties in any of these legislative lists (*ibid*).

State control over customary land was strengthened with the land policy reform adopted in the 1960s. *The Land Tenure Act No. 25* of 1962 was enacted to acquire and manage land in the interest of the people of Nigeria. This Act repealed all the land-related Acts passed by the British administration. Notably, the Act introduced customary and statutory rights of occupancy. The Emirate Council administered customary rights in the North and covered all public land, while the government administered statutory rights of occupancy in the South (Chubado, 2014). A slight change was brought into land administration through the Land Tenure Law – it placed land in the custody of the Minister while it was previously in the control of the Governor (Kuma, 2017; see also Section 4(1) *Land Tenure Law of 1962*). The Land Tenure Law of 1962 abolished freehold interest in land. Interests in land were still administered through norms and customs, assuming that claims were still deemed to be granted under customary law. However, all land transfers, sales, and mortgages had to receive the consent of the Minister. Both indigenes and non-indigenes were given statutory rights of occupancy with variation in the term of rights. Ninety-nine-year leases were granted to the natives, while 40-year leases were granted to the non-natives for residential and agricultural purposes (Kuma, 2017). After 15 years of the successful operation of the law, it was repealed with the *Land Use Decree* No. 6 of 1978 (LUD), now known as the *Land Use Act* 202 Laws of the Federation of Nigeria 2004 (LUA).

Reform to harmonise the existing legislation, land redistribution and eradication of land speculation are central to the promulgation of LUA. The LUA governs all land transactions

and regulates the ownership, alienation, acquisition, administration, and management of land in Nigeria (Otubu, 2018; Babalola and Hull, 2019a; Famojuro and Adeniyi, 2019). The LUA also confers various degrees of power to the state's governor regarding land transactions, the designation of urban and non-urban areas, revocation of rights of occupancy, and payment of compensation, among other things. The LUA also grants customary and statutory occupancy rights with little recognition given to customary land tenure (Babalola and Hull, 2019a). Moreover, Babalola and Hull (2019a) argued that, despite the provision in the LUA it does not ensure tenure security, ease title registration, or make land accessible in customary areas. This resulted in enacting other statutory regulations to aid land administration.

These regulations apply at federal and state levels. However, land administration decisions are taken at the respective state level, with the governor empowered by the LUA to have the Land Use Allocation Committee (LUAC) advise them regarding land administration in their states. Also, the local government is authorised to have a Land Allocation and Advisory Committee (LAAC) to report on land administration in the local government area. Many local governments failed to have LAAC in their respective states (Babalola and Hull, 2019a). Institutional and organisational frameworks for land administration in Nigeria are based on the above enactments. Institutional and organisational frameworks are explored in respect of Ekiti State in sections 5.6.2 and 5.6.3 as LAS differs from state to state.

5.6.1.4 Land reform programme in Nigeria

In 2009 a Presidential Technical Committee on Land Reform (PTCLR) was established by the Nigerian Federal Government to undertake land tenure reform because of a series of problems emanating from LUA and the existing legal framework of administering land in Nigeria. The LUA was a significant constraint to the programme's success (Mabogunje, 2010). The failure of LUA to deliver LAS that benefits all Nigerians and the problem of implementation of the law were central to the need for land reform in Nigeria (Atilola, 2010). This land reform aimed to "unlock the dead capital" of land in rural areas (*ibid*: 10).

Nigerian land reform is manifold: removing the provisions of amendment of the Land Use Act (LUA) from the Constitution, hence 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 terms of the latter, Sections 34 (2) and 36 (2) of the LUA are critical. These sections assume existing land rights holders are granted a certificate of occupancy which has the same validity as the certificate of occupancy expressly issued by Section (1) of the LUA. The owners and occupiers of such land are left vulnerable to other claims where statutory and customary rights were obtained over the land in which the LUA stipulates possessory rights. The inability to explore the opportunities offered in Sections 34 (3) and 36 (3) of the LUA to apply to the Governor or the local government chairman for a statutory or customary certificate of occupancy is due to lack of information, cost, ignorance, and illiteracy. Land reform programmes tend to address these inadequacies in the LUA, among other issues (*ibid.*).

The pilot studies initiated in Ondo and Kano state is significant in the current land reform programme (Mabogunje, 2010; Oluwadare and Abidoye, 2020). Nigeria's land reform is tailored toward achieving systematic land titling and registration (SLTR). The SLTR was developed with the assistance of the governors of Ondo state, Kano state, the United Kingdom Department for International Development (DFID), and PTCLR, respectively. The SLTR was intended to demarcate land parcels and issue a certificate of occupancy, which was supposed to bring about legal and institutional reform in LAS. A major component of the land reform is transferring the project from the PTCLR to the National Land Reform Commission (NLRC) (Mabogunje, 2010). In sum, there is a total misconception about what constitutes land reform; hence land reform is currently at a crossroads in Nigeria.

There was no significant change in approach from the former colonial and post-colonial interventions. Both periods witnessed the vesting of customary land in the state governor, holding it in trust for the people. The governors use their powers to acquire large tracts of

customary land under compulsory acquisition without compensation, resulting in conflict and tension between customary landowners and the state (Otubu, 2014; TA2, TA5, TA6, SA1, SA2, 2021). Most of these acquired lands are, in some instances, not used for public purposes (TA1, TA2, TA3, 2021).

5.6.2 Organisational framework in Ekiti State

As per the legal framework discussed in section 5.6.1, the state established an administrative framework comprising different departments to facilitate the formal LAS. The MLHPPUD was initially divided into six divisions: "Office of Surveyor-General (OSG), Urban and Regional Planning (URP), Bureau of Lands Services (BLS), Planning Permit Agency (PPA), Housing Corporation, and Urban Renewal Agency (URA)" (Oriye, Olorunleke and Owoeye, 2015: 109; SA1, SA2, SA3, 2021). The BLS and the OSG became different ministerial departments. The MLHPPUD is now known as the Ministry of Housing and Urban Development (MHUD) (SA1, 2021). Additionally, in rural and peri-urban areas, land administration activities are now supplemented by the local government authorities through area offices from MHUD (see Figure 5-8) (SA2, SA3, 2021). The state magistrate and customary courts also participate in land administration activities. These divisions and how they contribute to land administration are discussed in the following section.

5.6.2.1 Office of Surveyor General

The Office of the Surveyor-General (OSG) replaced the old survey department to become an extra-ministerial office. The OSG is the key government department accountable for all surveying and mapping in the state, including hydrographical, topographic, geodetic, cadastral, and control surveys. The OSG supervises cartography, photolithography, photogrammetric and remote sensing activities. These activities are used to produce thematic maps (SA4, 2021).

Also, all approval of survey plans for development purposes in urban, peri-urban, and rural areas are conducted by the OSG. The Surveyor-General's approval process is shown in which expands the OSG section in Figure 5-4. The approval process starts with the surveyor's

application to the Office of the Surveyor-General. State surveyors are posted to the sixteen local government headquarters to execute survey activities of the government in the local government areas (SA5, SA6, 2021).

OSG is a bureaucratic, extra-ministerial department under the MHUD. The Surveyor-General heads the OSG and reports directly to the Commissioner and Permanent Secretary of MHUD. The OSG is located in the capital city of Ado-Ekiti, overseeing the sixteen local government areas of Ekiti State. There is a lack of decentralisation; however, this was partially addressed by putting in place area surveyors to oversee the operations of the OSG in the local government areas. One area surveyor manages more than one local government jurisdiction. They are thus overstretched and the efficiency and effectiveness of OSG services in peri-urban areas are negatively affected (SA5, SA6, 2021). The departments in SG are headed by registered professionals and chief land surveyors (SA4, 2021).

The OSG plays a vital role in the land registration process, beginning with a request for approval by the Surveyor-General (PLS1, 2021). The registered surveyors prepare a survey plan. The survey plan is certified by the OSG after checking in that office. The OSG approval process takes two months, causing a delay in the land registration (World Bank, 2017; PLS1, PL2, PLS3, 2021). Also, inadequate numbers of staff and a lack of equipment affect the department's productivity (Sule, 2000; Oriye, Olorunleke and Owoeye, 2015; SA1, SA2, SA3, 2021).

The Surveyor-General of the state is the accounting officer overseeing all the activities of the extra-ministerial office. The OSG is divided into four departments: mapping and geo-Informatics, field and special survey, boundary department, and the administrative department (Oriye, Olorunleke and Owoeye, 2015, SA4, 2021). The Boundary Commission is a technical arm of the OSG overseeing inter-state, intra-state, and individual boundary disputes.

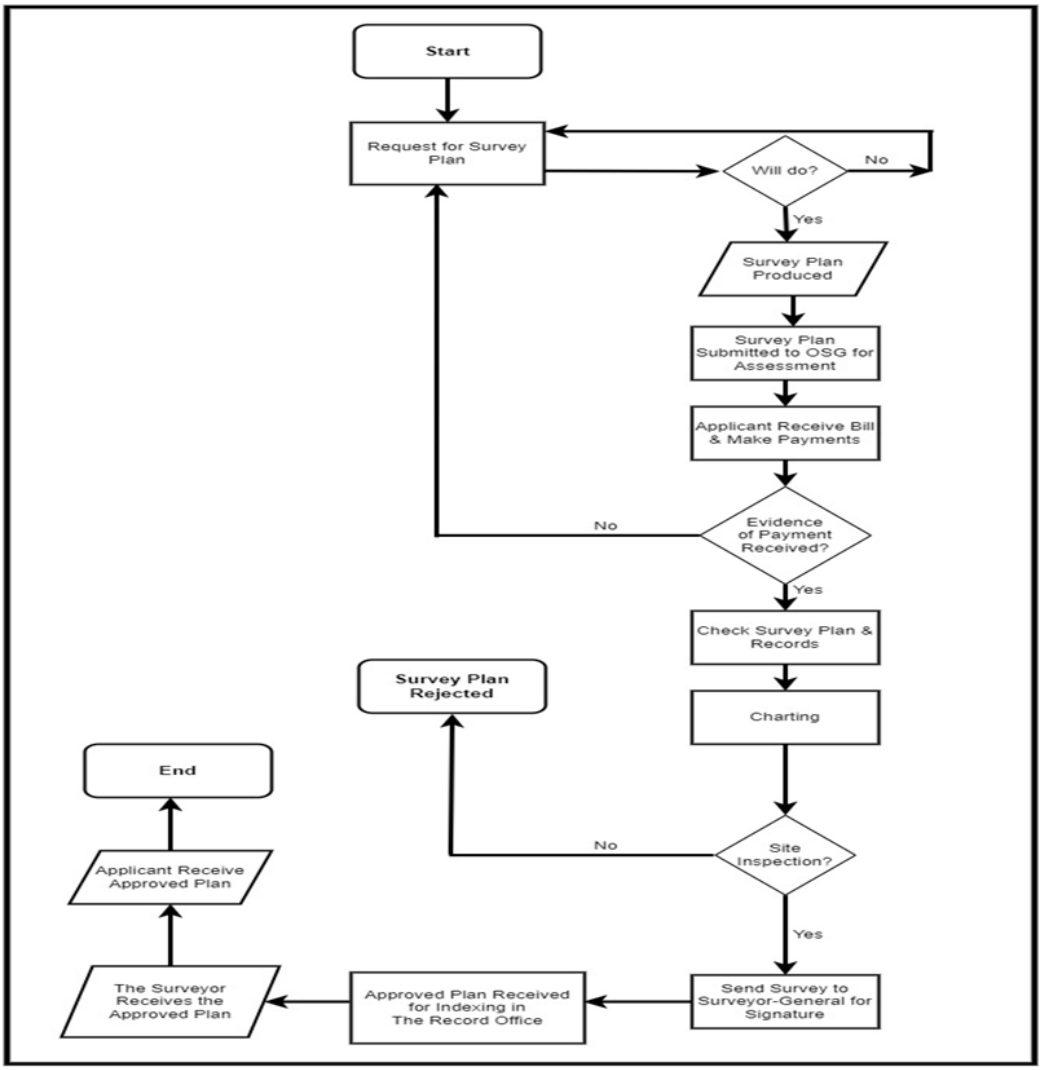

Figure 5-6: The Surveyor General Approval Process in Ekiti State (PLS1, PLS2, 2021)

5.6.2.2 Urban and Regional Planning (URP) Department

The URP is one of the departments whose functions are decentralised through the Nigerian Urban and Regional Planning Act (NURPA) No. 88 of 1992. It stipulates three levels of physical development plans in part 1(a). These are for the federal, state, and local government levels. The URP is responsible for preparing master and land-use plans, designing the layout, approving layouts, monitoring, and controlling physical development (Government of Ekiti State, 2021). The NURPA sets the standard for planning activities in Nigeria. At the state level, the URP Department is responsible for interpreting the NURPA law for all planning purposes. At the local government level, the area offices of URP are accountable for supervising planning activities for the local government areas.

Although the URP department is saddled with the responsibility of producing a master plan and land-use plans, over the 17 years of the creation of Ekiti State there has been no master plan for Ekiti State (Oriye, Olorunleke and Owoeye, 2015). This results in using discretion by the town planners for approval (SA1, 2021). The lack of a master plan in the state results in haphazard land development in Ekiti State (SA1, 2021).

5.6.2.3 Bureau of Land Services (BLS)

The BLS was formerly a department under the MLHPPUD, now under the Governor's office as an extra-ministerial office, created to enhance effective and efficient land management and services delivery. It was established in 2019 in line with the transformation agenda of the Governor of Ekiti State. The main functions of the BLS are land acquisition for the overriding public interest, compensation payments, creation and maintenance of government site and services schemes, provision of infrastructural facilities at government estates, property valuations, and processing of registrable instruments (*ibid*.). These functions are achieved through seven departments. They are land services, land use and allocation, deemed right, property management and valuation, finance and accounts, planning research and statistics, and administration and supply (see Figure 5-7). BLS functions are achieved through many laws, of which the principal one is the LUA of 1978. Section 5.6.3 discusses the BLS operations in the administration of land in detail. Table 5-2 discusses the difference between Figure 5-7 and Figure 5-8.

Table 5-2. Differences Between Figure 5.7 and Figure 5.8

S/N	FIGURE 5.7	FIGURE 5.8
1	Described BLS	Described all statutory institutions responsible for land administration in |Ekiti State
2	Activities report is from Director to Executive Secretary, Special Adviser and finally to the executive Governor	Director reports to Permanent Secretary, Permanent Secretary Reports to the Commissioner while the Commissioners reports to the executive Governor
3	Surveyor General and General manager Housing Corporation excluded	Surveyor General and General manager Housing Corporation included
4	Directly under the Governor's office as extra-ministerial office	Not directly under the Governor's office but remain a whole ministry.
5	BLS comprises seven departments.	MHUD comprises ten departments
6	Internal auditor report to executive secretary	Internal auditor reports to permanent secretary

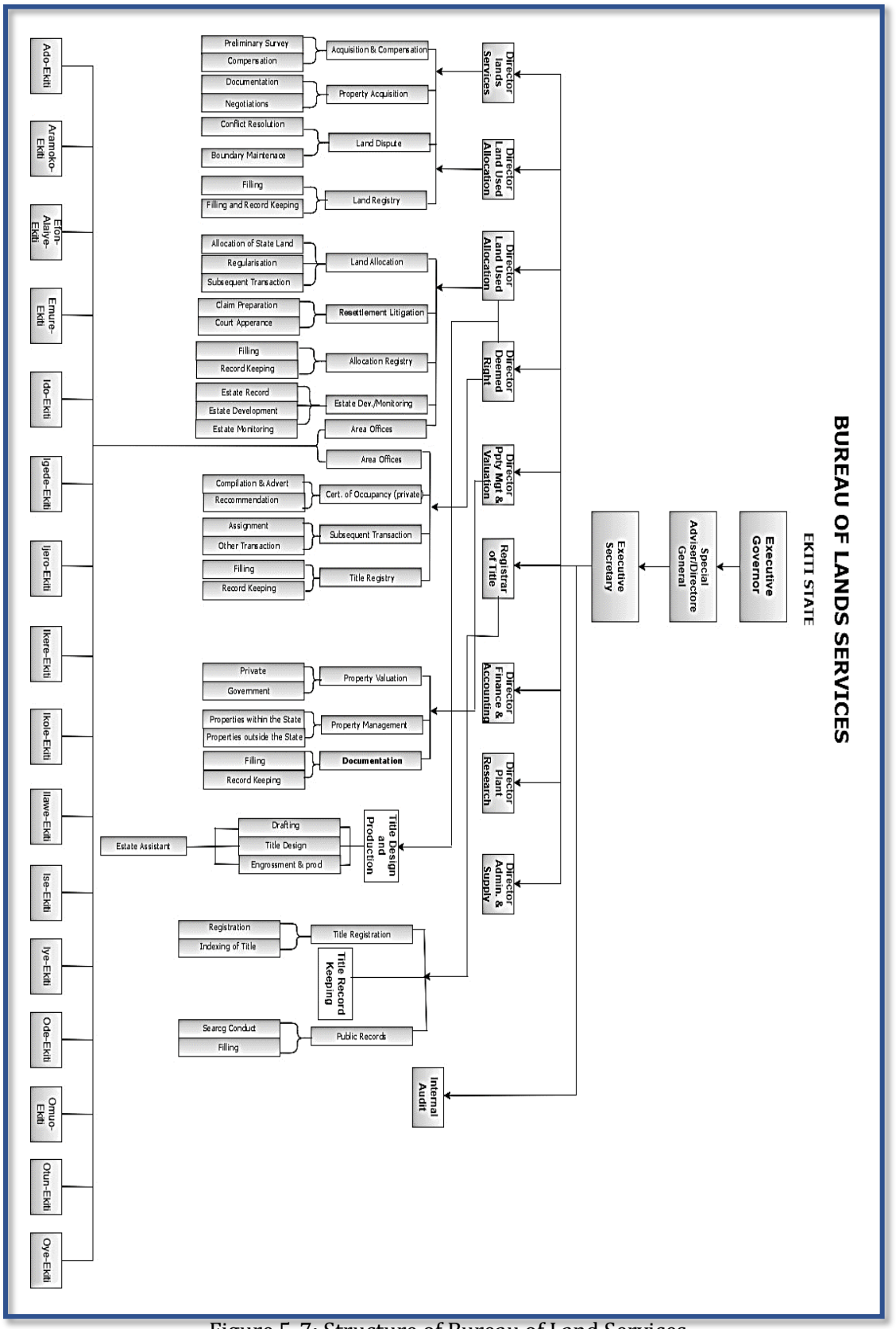

Figure 5-7: Structure of Bureau of Land Services

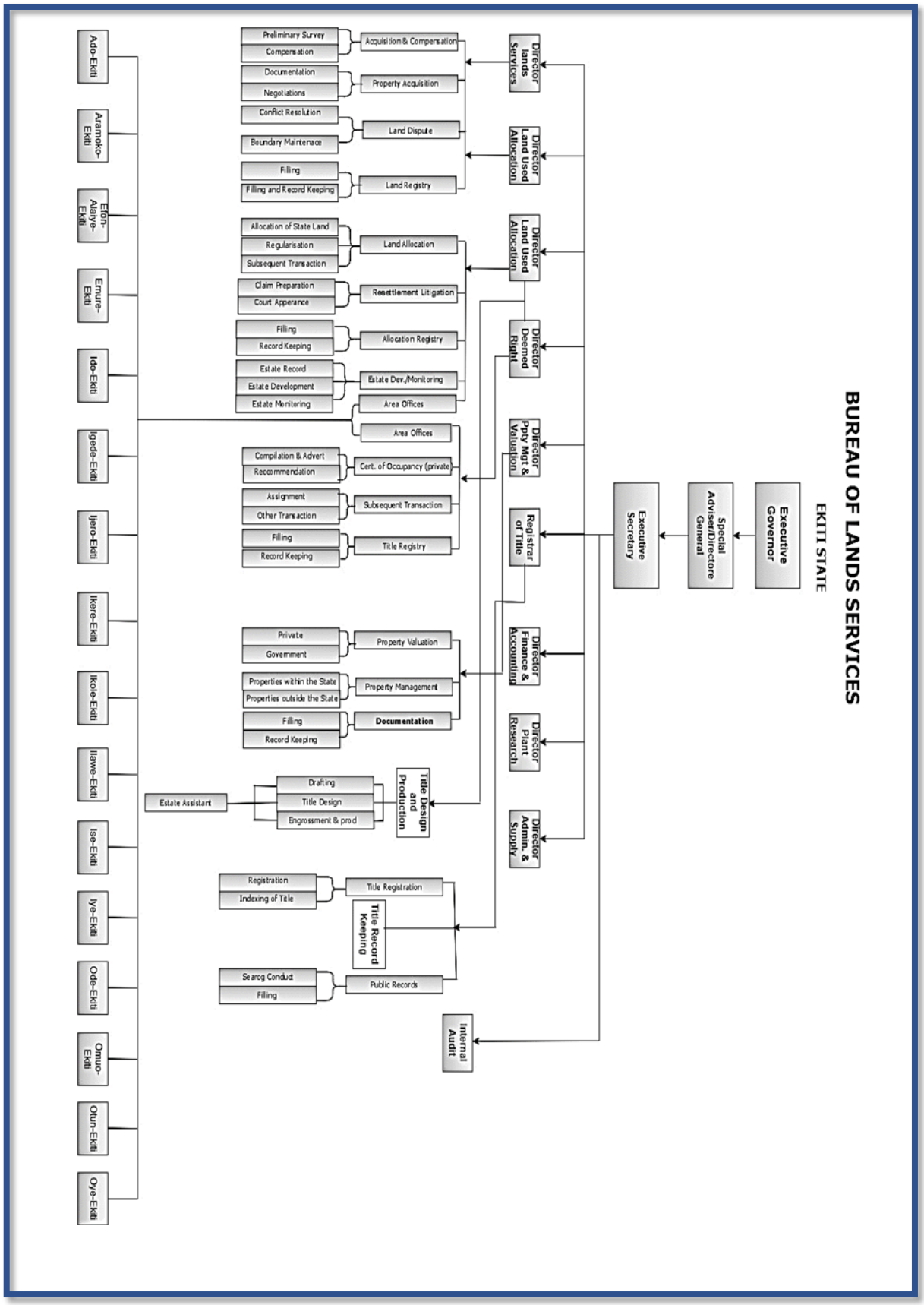

Figure 5-8 Statutory Institutions involved in Land Administration in Ekiti State

5.6.2.4 State courts

Land disputes are inevitable in both customary and statutory areas. The state court's role is to resolve conflicts relating to determining chieftaincy position, titles, or boundaries. Uncertainty and disputes that arise in land transactions or titled ownership are subjected to state court proceedings. There is a court hierarchy, with customary and magistrate courts established in all peri-urban areas (see section 5.3). An appeal in customary court goes to the Customary Court of Appeal of a State (CCAS). However, Section 280 (1) of the 1999 CFRN states that "there shall be for any state that requires it a CCAS". The implication is that the Constitution leaves the establishment of the CCAS mandatory only when required. A customary court of appeal is not in existence in Ekiti State. All appeals go to the State High Court, which is purely a statutory court.

Access to courts is a significant challenge for the rural and peri-urban populace. Social, economic, and political constraints hindering equal access to courts in Nigeria are: "levels of absolute and relative poverty, unequal income distribution, lack of financial resources, lack of education, and … ignorance of legal rights" (Frynas, 2001: 20). The customary courts in Nigeria are engaged in cases of land disputes in rural areas (usually around ownership), inheritance, marriage, guardianship, custody of children, and criminal matters (Idem, 2017). Due to congestion in the Nigerian courts, there is a backlog of unresolved cases. Customary courts visited in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti (6th October 2021) revealed from the court rolls that land issues occur less frequently than issues over inheritance, marriage, guardianship, and the custody of children. Many reasons may be attributed to this, among which might relate to the legitimacy issue and the non-establishment of the Customary Court of Appeal in Ekiti State. Despite this situation, most land cases are resolved by the traditional institution.

Many land cases decided by the courts do not lead to lasting resolution; the issues reoccur due to the lack of enforcement of the judgement of courts (see, for example, Babalola and Hull, 2019b). The non-enforcement or lasting resolution portrays the state court as inefficient in resolving land disputes, especially when the cases involve land in customary

areas. This situation calls for establishing a dispute resolution mechanism that is closer to the people and affordable for the people in customary areas. African dispute resolution mechanisms (ADR) are found appropriate to complement the state court (UNDP, 2004). It is effective and efficient in many circumstances (UNDP, 2004; FAO, 2006).

5.6.3 The institutional framework in Ekiti State

Legislation and instruments, as discussed (see section 5.6.1), are used for managing land by the Ekiti State government, usually involving administration of land, surveying and mapping, land registration, and land-use planning.

5.6.3.1 Administration of land in Ekiti State

The BLS is responsible for land administration in Ekiti State, administering customary and statutory land. Section 2 (2-5) of the LUA, 1978, makes establishing two land management bodies compulsory: the LUAC and the LAAC. The LUAC is responsible for advising the governor regarding land in the urban areas. The LAAC is responsible for advising the local government on matters of land in non-urban areas. The Governor also appoints the committee members with a consultation with the local government before selecting the LAAC members. In summary, three responsibilities are stipulated for LUAC: (a) advising the Governor on land management in urban areas; (b) advising the Governor on resettlement of persons affected by the revocation of rights of occupancy; (c) determining disputes concerning payment of compensation under the LUA for improvements on the land. LUAC and LAAC have not been constituted in Ekiti State (Babalola and Hull, 2019a, SA1, 2021).

Some measures used in administering customary land in Ekiti State certainly have shortcomings. For instance, MHUD, with all the designated departments, carry out their activities in rural and peri-urban areas (see section 5.6.2). Revenues are generated from ground rents, building plan approvals, and the fees paid for a certificate of occupancy. State institutions collect these revenues while the proceeds are in the state coffers. A major challenge in the collection and distribution of these revenues is transparency. The customary institutions in the customary areas where such revenues are collected are

excluded from the decisions relating to the distribution of such revenues. There should be a legislated formula for sharing financial resources between the statutory and customary institutions. The absence of this legal requirement allows the state to expend the most available funds on developing the urban centres, leaving the rural and peri-urban areas lacking social amenities (Omotoso and Owolabi, 2007; Apata *et al*., 2010; Oginni, 2018).

Section 28 of LUA empowers the governor to revoke occupancy rights on overriding public interest while Section 29 provides the payment of compensation for land improvement. For land acquisition in customary areas, compensation payments to affected community members are either delayed, inadequate or non-existent (Babalola and Hull, 2019a, SA1, SA2, 2021). Several of these acquisitions are done with force or without understanding the local populace. Most of this land is acquired without development. The non-development calls on the state to return such land to the former owners who need the land to earn their livelihood (LRH1, LRH2, LRH3, 2021).

Operations of BLS are maximisation of land use, making land readily available to the people (either as individuals, government, or corporate organisations) for developmental purposes, and disseminating government decisions on land matters. The BLS is saddled with ensuring that government decisions on land matters are carried out to the letter. Finally, documentation of land rights and the issuance of various title documents are BLS's sole responsibility (SA2, SA3, 2021).

Preparation of certificate of occupancy

The certificate of occupancy is processed per Section 9 of LUA of 1978 by the Department of Deemed Rights (see

Figure **5**-**7**). The land is held under customary and statutory tenure by the state. Customary or statutory occupancy rights can be obtained using either of the land tenure systems. Sections 5(1) & 6 (1) grant the governor and the local government the authority to issue statutory and customary occupancy rights. However, the governor is the sole issuer of the customary and statutory occupancy rights, relegating the local government to land

administration (SA2, SA3, 2021). The process is summarised below (SA2, 2021) and depicted in Figure 5-4:

- collection and submission of application form with relevant documents;
- payment of all necessary processing fees;
- enlistment;
- site inspection;
- advertisement for 21 days allows people with objections to the application to come forward;
- production of the certificate of occupancy;
- recommendation to the governor for endorsement;
- payment of stamp duty;
- registration of instrument;
- collection of the certificate of occupancy.

Challenges faced by the Bureau of Land Services

Although the plan of establishing BLS is to make land administration effective, BLS is faced with enormous challenges hindering the effectiveness and efficiency of land administration in Ekiti State. The first challenge relates to understaffing of the department resulting in the lack of human resources, which shows a lack of support for the government's reform agenda. The second challenge is the lack of equipment such as project vehicles for site inspections. Inspections are done during the land acquisition process, processing of certificate of occupancy, and when disputes or encroachments occur on government land. ICT infrastructure deficit is the third challenge of the department. All land registration processes are still executed manually. The manual registration process increases the processing time for land allocation and certificate of occupancy. The fourth challenge is the lack of awareness of land law and the lack of guidelines for land registration (SA2, SA3, 2021). The last challenge is the payment of unofficial fees; when asked why they pay fees

not required by law, the respondents replied, “because we are dealing with Nigerians” (SA2, 2021).

5.6.3.2 Surveying and mapping

Customary and statutory land management requires surveying and mapping under the cadastral survey regulation. Surveying and mapping are on concurrent legislative lists of the Constitution. Hence each state of the federation can conduct surveying and mapping within their jurisdiction. As discussed in section 5.6.2.1, each state established its Ministry of Land and Survey, which deals with survey and mapping. According to Survey Law and Regulation (SLR), only registered government and private surveyors can survey and map. The government surveyor is empowered under SLR to enter any land to conduct a survey. Also, government surveyors are authorised to check surveys undertaken for a registrable instrument for full compliance under the law, and fines are imposed for non-compliance. The *Survey Act*, No 22 of SLR, provides a procedure for survey work.

The constraints of surveying and mapping relate to the social, cultural, political, and economic environment (Sule, 2000). The people of South-Western Nigeria claim ownership of their land, which contradicts the provisions of LUA. The lack of adequate surveying control points results in the connection of the surveys to the local origin rather than the national coordinates system and often the running long traverse legs (PLS1, PLS2, 2021). Also, there is a lack of human resources, equipment, and facilities to effectively enable the survey department to discharge its duties (PLS2, 2021). Using outdated equipment and techniques causes delays in the survey process and the production of a certificate of occupancy (SA2, 2021). Besides, SLR specifies technical requirements and specifications for the various types of surveys. For instance, cadastral surveying is based on fixed boundaries with both linear boundary accuracy and beacon positional accuracy. Fixed boundaries entail the use of survey beacons to define the boundaries. Strict observance of these technical requirements in rural and peri-urban areas is inappropriate for the context, hence not satisfying their needs (Babalola and Hull, 2019b). Despite the SLR specifying that only a private registered surveyor may prepare a survey plan, the number of professionals is

inadequate to provide the surveying services (LRH1, LRH2, TA1, TA2, 2021). This situation results in charlatans surveying activities, causing non-adherence to the SLR. The involvement of charlatans conducting surveying activities results in land conflicts due to errors in the survey work carried out. In summary, the surveying and mapping department is poorly funded, contributing to the inefficiency and ineffectiveness of the services provided (PLS1, PLS2, 2021).

5.6.3.3 Land registration systems

Three land registration types are used in Ekiti State: deeds, title, and private conveyance. **Deed registration** refers to the recording of land transactions with the Registrar of Deeds, indicating continuous land rights transfers (Kanji *et al*. 2005). Deed registration is dated back to the Registration Ordinance of 1863, later repealed with some legislation for the country, such as the Land Registration Act No. 36 of 1924 and Registration of Titles Act 1935. The Registered Land Act of 1964 is used to register all titles in Nigeria. The object of the Registered Land Act is for all interest in land to be registered and entered into a land register. The Land Registration Act is the parent Act accepted by the state and re-enacted in some states under different names. The Deed Registry of the state records the deeds registered. The deed registration system is based on principles of security, evidence, notice and priority (Nichols, 1993).

The exception of registration of titles under customary law results in people relying on the technicalities of written documents under land title registration (see Zevenbergen, 2002). The lawyers play active roles in drawing up a transaction document which is expensive for the rural and peri-urban populace. For this reason, only the people who want the security of tenure perceived not to exist under the customary tenure system could afford to register their titles. Moreover, identification and establishment of boundaries are difficult to achieve because the cadastral plans attached to this deed were not correctly done (Zevenbergen, 2002). The leading cause of land litigations is the multiple registrations on the same piece of land due to the erroneous cadastral plan.

Land title registration describes property ownership. Registration is often time-consuming, with the state playing an active role in the title registration process. The entering of the title into the register becomes proof of ownership. The title under this system is irreversible once issued (Olubodun and Onukwuli, 2010). **Private conveyancing** allows for private arrangements for a land transaction. The transferring of interests in land are done by signing, sealing, and delivering documents between individuals without the supervision of the statutory institution. The documents relating to such transactions are held by the individuals involved or by a public notary. In this instance, the state control over such processes is limited, and there is no certainty of security in private conveyancing (*ibid*.). Dale and McLaughlin (1999) state that private conveyancing is slow and expensive.

5.6.3.4 Land-use planning

As stated in section 5.6.2.2, NURPA No. 88 of 1992 is used to control land-use developments and planning in Nigeria. The NURPA empowers the state to re-enact laws within the national policy to govern land-use planning in their respective states (see section 3(2a) of NURPA). The NURPA is re-enacted into the Ekiti State Urban and Regional Planning and Development (Amendment) Act of 2013 (ESURPD). The NURPA and ESURPD stipulate the creation of planning authorities for the supervision, land-use control, preparation, and implementation of development plans.

The Act establishes the Development Control Department in the state and local government areas (Section 27 of NURPA). For any land to be developed, section 28 provides that approval must be sought from the Development Control Department. Section 30 (1, 2) of NURPA stipulates that no private or government developer can embark on any form of development without a prior development permit granted by the Development Control Department. Therefore, development permits, rejection of development applications, revocation of a development permit, enforcement, and sanctions are the duties of the Development Control Department. When a developer refuses to apply for a development permit, the Development Control Department ensures a stop-work notice is duly served on

the developer. Also, the NURPA requires the Development Control Department to control all development on land within the local government's jurisdiction (Section 27 (5)).

The planning process lacks any form of a participatory approach. In the peri-urban areas, no collaboration exists between the customary institutions and the planning authorities. The preparation of layouts in most peri-urban areas is carried out by the individual family landowners, where demand for land is very high such as in the case study areas in this study. In most situations, land is sold before allocation to enable customary landowners to raise money to pay for the services of surveyors and planners. Also, many developers in peri-urban areas do not seek development permits before embarking on development. Developers apply for a permit when required to produce their permits or when the notice of stop-work is served.

5.6.3.5 Challenges of Ministry of Housing and Urban Development.

Achieving adequate and sustainable housing and urban development faces many challenges. Firstly, there is a lack of human resources. There are insufficient officers with housing and planning backgrounds. The officers employed are not adequately supported to provide efficient services. Few officers work in the head and area offices. An officer is stationed to oversee three local government areas, which delays approval for the building plans (SA5, SA6, 2021). Secondly, there is a lack of funds to carry out development control activities. Capital resources are not made available to produce a land use and master plan that will aid the approval process (SA1, 2021). Thirdly, there is political interference with the day-to-day activities of the ministry. Planning permit is reversed when it affects the political class. Hence structures may be built in unsuitable locations. Fourthly, there is a lack of planning tools, e.g., project vehicles for inspections. Planning officers use public vehicles for site inspection, causing delays and accessibility to site issues. Fifthly, there is a delay in getting the necessary documents to facilitate the approval process. For instance, the OSG approval takes too long, without which the building approval process will not commence.

Also, there is the problem of decentralisation. Despite the area offices in the sixteen local government areas of the state (see

Figure 5-7), planning decisions and approvals are authorised by the head office in Ado-Ekiti. Coupled with a lack of mobility, this causes unnecessary delays in the approval process. Lastly is the challenge of ICT infrastructure in the approval process. Everything in the ministry is still manually undertaken and goes through several statutory steps, hindering efficiency and effectiveness.

The institutions for land administration in Ekiti State are discussed in sections 5.6.2. The current land governance by these institutions is ineffective, with too many bureaucratic barriers built around LAS. Such bureaucratic obstacles make it difficult for peri-urban dwellers to access land administration services. The Land Governance Assessment Framework (LGAF) was implemented in Nigeria, where 96 dimensions show significant weakness in land governance (Adeniyi, 2011). All the six thematic areas used in that assessment show weakness in land governance (see Adeniyi, 2011: 6 for thematic areas used). Of interest in these thematic areas are large-scale land acquisitions, management of public land, and the legal and institutional framework, ranking more than 70% in their order of weakness (*ibid*.).

5.7 Ekiti State Traditional Council

The CFRN (1999) failed to establish the traditional council of Obas and chiefs. However, per customary law, the Ekiti State Traditional Council (ESTC) exists, and it is made up of Grades A to C. The grading is used to distinguish seniority in the position (Government of Ekiti State, 2021). The State also recognises ESTC by enacting a law that guides the council's operations. The traditional council is made up of Obas and chiefs. The ESTC serves as the linkage between the indigenous communities and the state. The state is accountable for the development of the indigenous communities, with ESTC discussing development demands with the state. Several sub-committees are set up within the ESTC to address development demands. Committees manage cases ranging from chieftaincy to land dispute and utility,

with disputes within the ESTC resolved by the committee set up by the ESTC. Appeals on committee decisions can be settled in the State High Court.

The ESTC is a non-political institution made up of paramount Obas called *Pelupelu,* which are Grade A Obas and the *non-Pelupelu* are Grade B and C from all the towns and villages in Ekiti State. The ESTC addresses matters of chieftaincy disputes brought before it in all the Grade Levels. Nomination and selection of Obas are made per the customs of each of the towns and villages (Babatola and Buhari, 2020). The ESTC is made up of sixteen paramount Obas who serve in the position of chairman of the Council on a two-year rotation. The ESTC members are responsible for regulating customary law and resolving chieftaincy disputes in their respective domains. The ESTC plays a significant role in the governance of the state (*ibid*.).

Statutory institutions manage customary and statutory land. (see Figure 5-8). The organisational framework for administering land in Ekiti State established several departments, as discussed in section 5.6.2. The departmental functions are fragmented and duplicated with overlaps. These departments help different aspects of the planning process without strong synergy for harmonising the registration process in a single transaction. In urban planning, the functions of URP and URA overlap. BLS duplicates the administration of land and the operations of OSG in the processing of registrable instruments. Additional difficulties occurring due to duplicated management responsibilities are lack of cooperation and the provision of consent payment before a title transfer can be effected. Consent payment provision conflicts with traditional authorities' role, as provided by customary law (Omotola, 1982; see Babalola and Hull, 2019a). The consequence is that the consent of traditional authorities for land transfer is not sought, which undermines the customary legal framework for land administration.

5.8 An Overview of Customary Courts in Southwest Nigeria

In pre-colonial times, indigenous laws governed every facet of life in Nigeria, except northern Nigeria, where Islamic law predominated in the early 19th century (Sulaiman, 1987; Diala, 2019). Sir Charles was appointed the second High Commissioner of the Northern region after Colonel Lugard. Sir Charles faced two challenges: the menace of inter-tribal wars and slave trading and establishing an efficient administrative system. The indigenous people resisted the importation of alien rule, which was based on religion "assuaged by a policy of religious tolerance" (Tamanaha, 2008 cited in Rhoda 2015: 60). To allow the minority alien rule by the British, the British adopted the indirect rule system of administration which allows indigenous laws to operate alongside the British imported English laws (Oba, 2011).

Nonetheless, recognising indigenous laws was restricted (Allot, 1960). Crowder (1968) stated that two categories of Nigerians were involved in the administration system. The first category was natives who had contact with the British colonialist through trade, education, missionaries, and the slave trade. The second category entailed tribal authorities (chiefs, monarchs, and elders) (Crowder, 1978). The second group is referred to as 'Warrant Chief'. Afigbo (1965: 268) stated that Warrant Chiefs were "merely the more adaptable natives of the successful trader type who act as advisers to the Court on the one hand and as subordinates or allies of the Native Court Clerk on the other hand." For the warrant chiefs to maintain their legitimacy in the colonial rule, they had to be willing to work with the British (Afigbo, 1967). These warrant chiefs were formerly enslaved people and out-casts who benefited from the western education of the European missionaries (Diala, 2019).

The British used an indirect rule system of administration as a solution to adjudication. The indirect rule adapted the "indigenous political structure to the needs of local administration" (Vaughan, 2000: 22). Two primary reasons contributed to the distortion of indigenous law. On the one hand, is the structure of the warrant chief system (WCS). The

membership of native courts was derived from the powers, privileges, and duties of the warrant chiefs, which makes the WCS equal to native courts (Diala, 2019). To award membership in the native court, the British colonialists employed a warrant or certificate of recognition (Afigbo, 1967). However, in pre-colonial times, respected elders or middle-aged people oversaw governance (Diala, 2019). The British colonialists violated the indigenous leadership criteria, and many communities in Nigeria still find this imposition an abomination (Afigbo, 1972). Korieh (2010: 72) stated that some communities nominated "social misfits as chiefs" because of the distrust of the British. The British imposed sympathisers and appointments in unusual manners in some instances (Tomlinson, 1923). The British also used an act of bravery to appoint a warrant chief (see Korieh, 2010).

On the other hand, Atanda (1973) asserts that adopting the indirect rule contributed to the distortion of indigenous law. Most of the warrant chiefs in southern Nigeria were successful traders with the British sailors or served as middlemen for their respective communities. These warrant chiefs misrepresented the indigenous position of governance structure in their locality based on commercial and political reasons (Diala, 2019). These misrepresentations allowed several traditional leaders to assume powers they never had before colonisation (*ibid*). To accomplish their economic and political agenda, they present different forms of indigenous laws, with the most economic agendas centred on issues concerning land (Diala, 2019).

The renunciation of the slave trade saw colonial interest in agricultural production, resulting in British colonial policy (Coleman, 1963). Communal land ownership hindered the exploitative colonial aims, making the colonial authorities uncomfortable with the existing land tenure system (Talbot, 1937; Meek, 1946). Hence, enacting the Crown Land Ordinance of 1900 vested all land to the colonial authorities (Uchendu, 1978). Korieh (2010) stated that colonial policies distorted indigenous property rights and gender relations, making land a socioeconomic struggle between the British, their agents, and indigenous communities (Diala, 2019). The warrant chiefs decided to distort land

ownership and conspired with the British colonialists to engage in “violent appropriation of land” (Diala, 2019: 7). In 1915, a “ruthless“ warrant chief forced villagers to sign a deed of grant for the mining of coal, which confirmed an earlier land acquisition by the colonial authorities (Umejesi, 2012: 58). Ilumoka (2013) stated that some groups of people like women and tribal minorities were denied land ownership using a distorted indigenous land law in and out of the courts. For instance, Diala (2014) noticed that the related responsibility to care for a deceased person's dependent was removed from the male primogeniture custom. The duties of the family head were substituted with powers and privileges as opposed to indigenous values (Uchendu, 1965). According to Diala (2019), when disputes originating from new behavioural changes were resolved in native courts, the most significant alteration of indigenous law occurred.

Before the advent of colonialism, disputes in Nigerian communities were settled in a tribunal (Diala, 2019). In Northern Nigeria, Emirs had jurisdiction to impose capital punishment, but such decisions were subject to the review of the High Commissioner, making an advanced system of adjudication (Nwabueze, 1963). However, adjudication was very informal in other parts of the country (*ibid*). The indigenous system of adjudication was not adopted by British authority, and it was not a part of the established judicial system. (Okany, 1984). To assist British commerce and educate local chiefs about the new government in town, the British established the Niger Coast Protectorate's first court in 1898 (Keay and Richardson, 1966). Diala (2019) asserted that the primary aim of establishing customary colonial courts was not to recognise and apply indigenous law but to achieve the British political and economic motives. Several years after the establishment of these courts, statutory regulations were not enacted to govern them (Nwogugu, 1976).

In 1900, there was the enactment of the first Native Courts Proclamation No. 5 and a reform to the proclamation in 1901 (Diala, 2019). This proclamation makes provisions for the creation of ‘minor’ courts, which comprised all other courts headed by the native authority or local chief (Afigbo, 1972). They are known today as customary courts. The Native councils

are above the Minor courts in the hierarchy of courts. Some Nigerian warrant chiefs and British political officers headed the native councils. Appeals from the native courts to the British courts were allowed through legislation in 1933. While in 1959, the Islamic courts were excluded from criminal law and limited to personal law (Agbede, 1972). Native courts were also established for natives without allowing an appeal from one to another. However, appeals are directed to the commissioners in the Supreme Court (Afigbo, 1972). The British used the services of the indigenes to run the native courts, which included "existing leaders and newly-appointed leaders" (Diala, 2019: 8). Diala summarised that since the indigenes carried out the native courts' administration, one will expect the British to recognise, respect, and record indigenous law. This was not always the case (*ibid.*).

The amalgamation of Northern Nigeria and Southern protectorates in 1914 resulted in the birth of Nigeria, with Lord Lugard appointed the first Governor. A uniform court system was established - a Supreme Court, Provincial Courts, and Native Courts with few modifications by him (Ilumoka, 2013). For instance, the native courts were structured on the procedures of the Supreme Court, "which was an English court to all intents and purposes" (Nwabueze, 1963: 1). Native laws and customs were required to be applied in native courts. Still, their presiding officers were keen to apply English law familiar to them (Diala, 2019). With this act of subjugation of native laws and customs, the indigenous members of the courts were relegated to ordinary advisers on indigenous laws (Okany, 1984). The procedures of administering justice did not require the services of a lawyer in the provincial and native courts. However, provincial administrators supervise provincial courts (Ilumoka, 2013). Four grades of native courts were established under the Native Courts Ordinance 1914 (A, B, C, and D). Complete civil and criminal jurisdiction was granted to Grade A courts, but they were not allowed to administer the death penalty without the consent of the Governor. The Paramount or Head Chief was given a position sitting with principal officers (*ibid*.). Grades B, C, and D were staffed with inconsequential chiefs incorporating the traditional authorities into what is considered a new colonial system of courts.

Vaughan's (2000) composition and jurisdiction of native courts failed to depict the true picture of indigenous tribunals and traditional authority. Moreover, native courts were established with little regard for the cultural affiliation of the communities in which these native courts are located (Diala, 2019). The native courts formed the basis for local authority and, at the same time, performed executive functions, with the fusion of executive and judicial powers distorting several indigenous norms (Afigbo, 1967; *ibid.*). For instance, most of the warrant chiefs appointed "strong and audacious" headmen and messengers to assist in their coercive style of colonial administration (Afigbo, 1972: 104). The inability of these assistants to effectively speak and understand the English language in their role as clerks and interpreters in the native courts, coupled with the procedural structure of native courts, added to the distortion of indigenous norms (Diala, 2019). The native courts applied "native law modified to suit the British conscience" instead of using "native law and custom" (Afigbo, 1966: 543). The modified native law is far from being indigenous law (*ibid*). The judges used the repugnancy test to interpret indigenous law, which has been attributed to be the major contributor to the alteration of indigenous law's identity in the courts (Nwabueze, 2002; Diala, 2019).

Further reform of customary courts occurred through the Native Courts Ordinance of 1948 and amended in 1951 (Diala, 2019). After the approval of the federal state in 1954, the court's responsibility became regional; afterwards, state governments with the federating regions adopted customary laws (*ibid*). The term 'native courts' was retained in the northern areas, while the eastern and western regions changed the taxonomy of native courts to customary courts (Nwogugu, 1976). Diala (2019: 10) concluded that all the reforms carried out by the colonial and post-colonial administration "mitigated the distortionary blow" on indigenous law's identity.

From the preceding discussion we may deduce from the western region perspective two organisation fields: the region of the west customary law and the state law organisational fields. The duo is vital though it promotes different values, norms, bureaucratic traditions,

organisational cultures, and political inclinations. The customary courts at the connection of the two organisational fields exhibit unique challenges. For customary courts to continue existing, the president and staff of customary courts must manoeuvre between the opposing pressures and expectations coming from two differing organisational fields. To detail how this manoeuvring occurs, let us analyse how customary courts operate concerning land administration issues. The land administration issues relate to how ownership is proven, recording of land rights, inheritance issues, and the role of customary leaders (see Chapter 6).

5.9 Summary

The legal frameworks and LASs in Nigeria and the Ekiti State were discussed in this chapter in a narrative form focussing on legal, organisational, and institutional frameworks. The narrative in this chapter addressed research objective 1. The overview of sources of law, classification of law, and land tenure system in Nigeria were also described. The description provided the basis for the LASs with their legal frameworks in Nigeria. It further examined the customary and statutory tenure system and administration concerning their interactions and overlap. The aim was to provide an understanding of the legal framework from pre-colonial and post-colonial periods by describing the existing legal framework for administering land and the extent to which the current legal framework supports LASs in peri-urban areas. Research question 1 is "How is the legal framework for administering land in Ekiti State in Nigeria constituted, what is the effect on tenure security and how does the existing legal framework support the LAS structure?" As shown in sections 5.6.2 and 5.6.3, the legal framework is constituted according to hierarchy and jurisdiction in land administration in which statutory institutional supremacy exists over customary institutions. This challenge needs to be addressed to strengthen the legally plural LASs. The description shows a broad institutional, organisational, and legal framework for land administration in which customary institutions are restricted in their involvement in land administration (see sections 5.5.3; 5.7). Areas of restriction relate to revenue generation,

registration, issuing a certificate of ownership, and local land management. These restrictions indicates that their involvement in land administration is limited. Finally, the description of the legal framework for land administration is faced with the fragmentation of institutions, as well as bureaucracy, long duration of processing land documents, large-scale land acquisition of customary peri-urban land, inconsistencies and contradictions of laws, and tenure insecurity (see Sections 5.6.3.1 and 5.6.3.5).

The extent to which customary and statutory institutions ensure tenure security is explored. The statutory institutional framework for land administration is discussed in section 5.6.3. It is shown that there is ineffectiveness in land governance resulting in tenure insecurity. The tenure insecurity is caused by large-scale land acquisition. Most of these lands are not used because of implementation of a tedious process of obtaining title to land, payment of unofficial fees, the lack of a participatory approach in land administration, un-constituted LUAC and LAAC in Ekiti State, and political interference.

The customary institutional framework is customarily recognised but constitutionally unrecognised in land administration. As discussed above, customary institutions are restricted in land administration. In the provision of consent payments before title transfers, the statutory institution stepped into the shoes of the customary institutions. Several agricultural lands are rezoned to residential land, causing tenure insecurity for subsistence farmers. Thus, the existing legal framework supports statutory land administration while customary land administration is not supported.

Furthermore, Research question 1 asked, "How does the existing legal framework in Ekiti State, Nigeria support the LAS structure?" The legal framework shows confusion in recognising the customary tenure in LUA (Babalola and Hull, 2019a) and a non-participatory approach in enacting the LUA. A colonial model of land administration is still adopted in the current land policy, which tends toward replacement theory instead of adaptation theory (see Hull, Babalola and Whittal, 2019). Adaptation theory promotes a context-specific, balanced approach to land reform (*ibid*.). Both colonial and post-colonial

interventions still restrict the customary legal framework for land administration. The policy interventions adopt the *nationalisation* theory of land, limiting customary land management. The statutory institutions continue to be the major instrument used in administering customary land. Having many departments and regulations causes the high cost of land transactions and tenure insecurity.

The current LAS does not support the objectives of decentralisation; instead, 'deconcentration' is adopted (see section 8.6.2). The current land policy lacks the provisions for decentralising LAS to peri-urban areas. There is a need for a legal framework incorporating local land management by adopting full-scale decentralisation of land administration activities. The new land reform programme failed to address the institutional and legal framework for land administration on its full scale (Section 5.6.1.4).

The next chapter used institutional isomorphism theory to analyse customary courts and CCAS.

6 Legal Pluralism: An Institutional Theory Viewpoint on Courts of Law - Customary Land Law in Peri-Urban Ekiti State

6.1 Introduction

This chapter covers analyses of customary courts and CCAS of law as organisations entrenched in an organisational and institutional context using institutional isomorphism theory. The analyses of customary courts of law may help further gain insight into the debates on legal pluralism. In Chapter 2, legal pluralism was discussed, and the two sides of the spectrum were identified as Weak (State-law) and Strong (Deep) legal pluralism in post-colonial countries (section 2.3.1). This disparity informed the debate on the position of law, institutions, and administration in post-colonial settings. Customary law, administration and tenure systems have been resilient to date (section 2.2.2). These observations raise a question as to the extent of the recognition given to a customary legal framework in a post-colonial context.

As discussed in section 3.4, the institutional isomorphism theory was used to assess customary courts in the three case study areas of peri-urban Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti, in Ekiti State. Central to the principles of institutional isomorphism theory are three forms of institutions: coercive, mimetic, and normative. These institutions are described using the three elements of institutions (regulative, normative, and cultural-cognitive) (see sections 3.4 and 3.5).

In this chapter, customary courts are examined to ascertain into which of these Organisational fields their operations should be classified. Organisational fields here imply indigenous or colonial structures. The analysis draws on land judgements from customary courts and customary courts of appeal of a state (CCAS) because the duo are examined to determine in which organisational field they operate. In addition, the work of Anyafulude (2012) is used to supplement this analysis because it is a published book mainly on analysis of customary courts and CCAS. The results of an empirical case study narrative are used to assess the organisational fields in which customary courts operate. The customary court

system is recognised in the Nigerian legal system with a specified jurisdiction of operation. The assessment is based on the interaction between customary community members and statutory institutions in the land administration process. This is because customary community members reside in peri-urban areas and the Customary Court is the statutory institution mandated to serve the interest of the community members.

The findings of the study are presented in section 6.2 onward. Section 6.2 starts with the results of the analysis of customary land law in courts of law. In section 6.3, the institutional isomorphism theory is used to analyse the organisational field of customary courts. The judicial policy of customary courts is also discussed. How customary courts are managing conflicting isomorphic pressure is examined in section 6.3.1. The land administration practice and the courts are presented in section 6.4. Section 6.5 presents the summary of the chapter.

6.2 Customary Land Law in Courts of Law

The 1999 Constitution created superior and minor courts of record (Anyafulude, 2003). The courts established for the Federation by the Constitution are superior courts of record (see section 6 CFRN 1999). The judicial powers of each state are vested in the courts established by the states. Section 6(5) (a-I) stipulates the courts established for the Federation and the states (Figure 5-1). Apart from courts established by the Constitution, the National Assembly and the state House of Assembly are empowered to establish courts - these are minor courts of records (section 6(5) (j-k)). Hence Customary Courts, Area Courts, Sharia Courts, and Magistrates Courts are excluded from section 6(5) (a)-(i) but included in section 6(5) (j)-(k).

Also, as stated in sections 5.2.5 and 5.6.2.4, appeals from customary courts go to a CCAS. The customary courts are minor courts of record, while the CCAS is a superior court of record. However, the states are not mandated to have a CCAS due to constitutional shortcomings. In Ekiti State, CCAS is not in existence; all appeals go to the State High Court. Hence the study examines land cases and matters in High Courts in the jurisdiction of the three peri-urban

areas. This complements the study data from the customary court to investigate the determination of customary law. Moreover, cases heard in the Supreme Court are also examined as the Supreme Court is the apex court of the land (see section 5.2.5).

The primary aim of establishing the minor records courts was to provide affordability and accessibility of substantial justice. Substantial justice means justice that is considerable and void of technicalities but solely interprets customary law of the area binding the two parties (Anyafulude, 2012).

Although the courts in Nigeria apply customary law, they are not empowered to do so by the CFRN. This section will therefore examine the application of **judicial** customary land law, which will enable an analysis of how Nigerian courts answer questions relating to the granting of customary and statutory rights of occupancy, trespass issues, proofing of title, tenure security of rights in land, the power of alienation, customary landlord and tenancy relationships, customary ownership of land and the role of the family head, chiefs, and Oba in land administration. This analysis draws on the certified true copies of land judgements obtained from customary courts and High Courts in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti. It is worth mentioning that the High Court is not in the Oye-Ekiti jurisdiction and that the customary courts in these jurisdictions have fewer land cases on their register of cases. This is also supplemented by land cases derived from textbook (Anyafulude, 2012).

6.2.1 Customary and statutory rights of occupancy

Case laws in respect of customary and statutory rights of occupancy are analysed in this section to access customary land law in courts of law in Ekiti State. This analysis will help provide more evidence as to which statutory legal framework for land administration controls customary land, thereby causing tenure insecurity.

Section 51 of LUA of 1978 defines customary rights as the rights of a person or a community lawfully using land under customary laws, customs, rules, and norms. Section 6 of LUA empowers the local government area to grant Customary Rights of Occupancy for

residential, agricultural, and grazing purposes. There is a strict restriction on the power of the local government when the land in question exceeds 500 hectares for agriculture purposes and 5 000 hectares for grazing purposes, except with the governor's consent to grant the same (Section 6(2) of the LUA, 1978). In addition, Section 6(3) empowers officials of the local government to enter upon any land within its jurisdiction for public purposes. According to Section 5(1) of LUA, statutory rights of occupancy refers to the rights granted by the governor on land in urban areas for issuing a certificate of occupancy. Two forms of customary and statutory rights of occupancy occur. These are *deemed* and *expressly* granted (see Babalola and Hull, 2019a; Adejugbe and Adejugbe, 2019). 'Deemed granted' relates to the rights under customary and statutory tenure existing before the promulgation of the LUA. The provision of Sections 34(2) and 36(2) assumes that the existing holders are deemed to be granted a Certificate of Occupancy. 'Expressly granted' relates to the certificate issued under the provisions of Section 5(1). Any community member has the right to apply for land registration. The community member then acquires a Customary Right of Occupancy interest (Section 51 of LUA, 1978). Despite the clear distinction between who issues customary and statutory rights of occupancy, the governor remains the sole issuer of the two forms of rights existing in urban and rural areas.

Until recently, several cases held that the designation of urban and rural areas was yet to be gazetted in Ekiti State by the governor who has the sole power to do so.[8] The Court relies on the description of the plan prepared by professional land surveyors.[9] Supporting this further, case law under Abiriyi (JCA) states that: "The determination whether or not the land is within an urban area is a matter of evidence of a surveyor or a map tendered to explain

[8] Yinka Aderibigbe V the Incorporated Trustees of Ado-Ekiti Merry Sisters Society 2018:62, 19. "[I]t was submitted that the evidence on record showed that land in dispute was subject of customary law rules and the Government of Ekiti State from 1996 till date had not divided the land in Ekiti to urban and rural areas." See sections 3 and 45 of the LUA of 1978.

[9] Ogu V. Nwaobia (2000) FWLR PT. 6. 922 at 952.

the area designated urban area. It is not enough for counsel to state before the Court that the disputed area is in an urban area."[10]

The High Court also held that "it has the jurisdiction to entertain proceedings relating to declaration of title for both customary and statutory rights of occupancy."[11] For instance, in Aderibigbe v. Incorporated Trustees (2018), three issues were set out for determination for the claimant: 1) a declaration that the claimant is entitled to a customary right of occupancy, 2) that the claimant is in possession of the said parcel of land, and 3) the award of 2 million Naira (5 700 USD) damages against the defendant for hindering the claimant to take possession of the land in dispute. The Customary Right of Occupancy sought by the claimant is *expressly granted*. In determining this case, it was held that:

> *"Having sought declaratory relief, it was incumbent on the claimant to convince the court that the land in respect of which the relief of customary right of occupancy was sought was rural. This he had failed to do. There was no evidence before me of the status of the land in question, whether or not it was a non-urban land despite the issue having been joined on it in the circumstance, the granting of relief No. 1 in the claim would be manifestly wrong as it would violate the provisions of Sections 5 and 6 of the Land Use Act, Cap L.5, LFN 2004 relating to Rights of Occupancy. Relief 1 is as a result of this refused."*[12]

Under this circumstance, the consideration of whether reliefs 2 and 3 will hold is then determined because reliefs 2 and 3 are ancillary claims. Ancillary is any claim that reasonably may be said to be collateral to, dependent upon, or otherwise auxiliary to a claim asserted within federal jurisdiction in action (Garner, 2004). Nwaogu v. Atuma (2013) states that the ancillary claims must also fail when a party fails in their principal claim. The reason has been that ancillary relief flows from the primary relief already refused. In this

[10] Ministry of Land & Survey, Yola & Anor V Sangere & Anor (2018) LPELR – 45986 (CA), para 81 p. 38
[11] Para 65, p. 22 (*ibid*). See also Adisa V Oyinwola (2000) 10 NWLR (674) 116, Akanbi V Salawu (2003) 6SCNJ 246 at 254 lines 24-29.
[12] Yinka Aderibigbe V the Incorporated Trustees of Ado-Ekiti Merry Sisters Society 2018, para 82 p. 39

instance, Ogunmoye[13] states, "with the failure of the core relief, the ancillary reliefs relating to possession and damages would fail to have no foundation".

This judgment seems to be based more on technicalities than evidence (see also Anyafulude, 2012). As discussed previously, the only way to show if the land is urban or non-urban is that the court relies on the evidence of a surveyor or a map showing the same. Exhibit 2, in this case, [14] showed the layout plan prepared by a licensed surveyor. A layout plan shows a detailed description of the location of the land. The description indicates the name of the land, the location of the land, and the local government area where the land is located. For instance, in Akilo & Others v. Odeyemi (2018), counsel for the plaintiff argued that in civil cases a "balance of probabilities and preponderance of evidence" is used to determine whose evidence is weightier. But this was not applied in the Aderibigbe v. Incorporated Trustees case, in which the plaintiff pleaded credible evidence to prove her case. The evidence of both parties was not placed on an imaginary scale of justice to determine which was heavier.

In addition, Customary Rights of Occupancy can be granted on lands in rural areas in customary courts as stipulated by Section 41 of the LUA. However, they cannot grant land in urban areas. In the three peri-urban areas under study, customary courts are not empowered by the LUA to try land matters in their jurisdiction, which is not subject to customary rights of occupancy or grant customary rights of occupancy to land in their jurisdiction. This is so because land matters were not on their registers. In Oye-Ekiti, no cases relating to land matters were available. The customary court dealt only with issues concerning family, marriage, child custody, etc. In Ikere-Ekiti and Ijero-Ekiti, two land cases were obtained, and neither was in respect of the declaration of customary occupancy rights.

[13] Ogunmoye 2020 as per Falade & Others v. Orire & Others p. 51
[14] Para 45 p. 2. Yinka Aderibigbe V the Incorporated Trustees of Ado-Ekiti Merry Sisters Society 2018

Peri-urban areas, where most of the land is derived from the customary land tenure system, suffer from the implications of the LUA. The LUA is not supporting the granting of customary rights of occupancy to land in peri-urban areas by the customary court or trying land matters that are not subject to customary occupancy rights. The statutory legal framework under the LUA brought into existence the form of tenure, known as 'rights of occupancy'. The Governor is the sole grantee of both customary and statutory rights of occupancy using several statutory institutions, thus making the process tedious and cumbersome (see section 5.6.3).

After examining case law on how customary and statutory rights of occupancy are granted in courts of law in Ekiti State, it was found that the statutory legal framework for land administration suppresses the customary legal framework, causing tenure insecurity for the peri-urban populace. The following section examines case laws on proving title to land because title to land is key to ensuring tenure security

6.2.2 Proving of title to land

As explained in chapter 4, there is high demand for land in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti. Hence ownership disputes are predominant in these peri-urban areas. Examining how court cases deal with proving title to land will be worthwhile. Case law recognises five ways of establishing title to land, which has become accepted common law through a 1976 case in the Supreme Court: [15]

- traditional evidence,
- by the production of documents of title duly authenticated,
- by positive acts of ownership such as selling, leasing, renting out or farming on all or part of the land extending over a sufficient length of time, or which are

[15] See Idundun v. Okumagba (1976) 9-10 SC 227 Per Fatayi-Williams JSC; Alli v. Alesinloye (2000) FWLR (pt. 15) 2610 at 2632 paragraphs A-D.

numerous and positive enough to warrant the inference that the person is the valid owner;

- by acts of long possession and enjoyment of land,
- by proof of possession of connected or adjacent land in circumstance rendering it possible that the owner of such connected or adjacent land would also be the owner of the land in dispute.

Despite these five ways of proving title to land, the court judgements state that the ownership claim with a 'better' title will be adjudged the owner (see also Anyafulude, 2012: 146).[16] The 'better' title refers to one who pleaded and tendered a survey plan as evidence during proceedings of determining ownership. Accepting the survey plan as a better title indicates that whoever has the economic power to register land in the formal land registration system will be adjudged the owner of land even when they may not be the owner.

However, it is pertinent in law that whoever proves title by traditional evidence must state the one who founded the land, how the land was founded, and the particulars of the intervening owners through whom they claim.[17] When the two parties in a dispute rely on traditional history, the court is obliged to compare the two traditional histories to decide which is more probably an act of possession within living memory (Anyafulude, 2012).[18]

In Alabi & Others v. Alabi & Others,[19] it was held that where two persons are in dispute as to who owns the land, it is trite to affirm that the one who holds the title to the land is the

[16] Arugbajoye & Others v. Ogunmola & Others (2019) 60; Arase v. Arase (1981) 5 SC 33; Adeolu v. Ishola (2007) 1 JNSC (pt. 28) 577

[17] Eyo v Onuoha (2011) 11 NWLR (pt 1157) 1 at 44-45; Okolie v. Onyejuluwa (2000) 10 NWLR (Pt. 676) 450.

[18] Alade v. Awo (1975) 4 SC 215; Ogbuokwelu v. Umeanafunkwa (1994) 5 NWLR (Pt. 341) 6767.

[19] Alabi & Others V. Alabi & Others (2017).

one who has possession of the land.[20] This confirms the common law's superiority in proving title to land. Several cases decided within these peri-urban areas followed the same line of argument - these are examined briefly. For example, Okimi v. Igbalajobi & Onigiobi[21] (2019) held that before a land title is decreed, the land it relates to must be ascertained with certainty.[22] In other words, definite and precise boundaries of the land claimed must be unambiguous. The term 'precise boundaries' here implies that a survey plan must be produced as that is the only document that shows precise boundaries.

In Arugbajoye & Others v. Ogunmola & Others[23] (2019), the defendant stated: "that the claimant is my landlord having allotted land to my husband and me wherein we have our building". One of the claimant's witnesses also stated that there were many buildings on the land built by people to who the claimant's family allotted land. The allottees approached the court for a declaration of title to areas allocated to them by the claimant's family. The court stated that "the allotment to a member of the claimant's family does not in any way confer on allottee the absolute rights, for no one can transfer what he has not got" (*ibid*: 70). Omotoso (2019) further stated that no matter the extent of time the land has been used by the claimant, or what improvement was made on the land, the occupational right conferred can never evolve into full ownership.[24] The argument is difficult to appreciate because an allottee had been given permission to use the land, and a permanent structure was built without hindrance. It will be unlawful to allow someone to build a permanent structure and hinder the person from having a title to the same land. This land cannot be taken away from them and the others. In Salami v. Oke (1987), "the interest of the customary tenant is regarded by the courts in practice as practically indefeasible, especially after permanent

[20] See also Basil v. Fajebe (2001) 11 NWLR part 725 p. 592 at p. 617.
[21] Okimi V. Igbalajobi & Onigiobi (2019) para 192 pg 29.
[22] See also Onu v Agu (1996) 5 NWLR (pt. 451) 652, 662, para-E; Nwabuoku v Onword (2006) AFWLR (pt. 331) 1236, 1255, para-A-B.
[23] Arugbajoye & Others v. Ogunmola & Others (2019
[24] Arugbajoye & Others v. Ogunmola & Others (2019) pg. 71.

buildings or other forms of improvement like extensive commercial farming or occupation have been established thereon by the grantees."[25]

Similarly, in 2020 the claimants seek a declaration of a title to their family land already allocated and developed. The court stated that the claimants' family, having transferred their ownership of some areas of their land, were no longer entitled to a declaration of title to the same areas of land.[26] Adeyeye (2020) stated that a claimant who had transferred his land to someone else for a considerable amount could not seek a declaration of title or rights of occupancy on the same land. He has by that act ceased to be the owner of such property.[27]

In 1997, there was a case in a minor court of records (area court) where the plaintiff claimed ownership of a piece of farmland. The appellant claimed that his grandfather and relations founded the disputed land. The land was given to the family of Alenu Idoko. When he died, the appellant came to live on the land and started laying claims to the ownership of the land. The respondent and his witnesses could state in their evidence how they and their family had been in long possession of the land. The appellant claimed the land belonged to his father. The court listened to both parties and afterwards visited the site. After visiting the site, the court gave the judgment in favour of the respondent. The appellant appealed the decision of the Area Court to the High Court, in which the High Court upheld the decision of the Area Court. A further appeal was made to the Court of Appeal, arguing that the respondent did not establish the root of his title by proving his land ownership claim. The appellant further stated that the evidence the respondent and his witnesses led concerning who cleared the disputed land and who initially settled on the land was contradictory. In dismissing the appeal, the Court of Appeal held:[28]

[25] Salami v Oke (1987) 4 NWLR pt. 63 1
[26] Ojo and Alatise v Ojo (2020) 127, 40
[27] *Ibid*. para 127 pg. 40

[28] Akpa V. Todo (1997) 5 NWLR (pt. 506) 589

"It is settled law that a plaintiff must succeed on the strength of his case and not on the defence's weakness. The plaintiff may, however, draw strength from the case of defence and his witness(s) where the defence inferentially supports and invigorates the plaintiff's case."

Relying on traditional history for a declaration of title requires the title to be traced to the first person who settled on the land, mention the number of children the first settler had till his death, how the land devolved on the family over the years, and to state whether the land had been partitioned which enables the plaintiff to own a portion exclusively. In ascertaining this by the Appeal Court from a case on appeal from a minor court of records, the superior court of records does not apply strict technicalities of the rules of evidence. All they ascertain is that substantial justice is done. Most of the land cases and matters in the three peri-urban areas originated from the High Court and not from an appeal from the customary court. Hence rules of technicalities affect the mode of justice delivered on tenure in peri-urban areas of Ekiti State.

Proving a title to land in a customary court when traditional history fails is another issue that needs to be examined. In Arum v. Nwobodo (2004), two claims were brought against the appellants by the respondents: a declaration of title to a customary right of occupancy to a piece of land and an order restraining the appellant from further trespassing on the land in dispute.[29] After both parties called their witnesses and testified, the respondent and the appellant gave their testimony representing themselves. The trial court visited the site, where additional witnesses gave statements that were recorded as evidence. The judge asserted that the respondent had a mastery of the boundary of the land in dispute. He further stated that, during the site visit, the statement of the oldest man in the community was in line with the respondent's statement and thus supported his case. The trial court mentioned that the appellant failed to challenge the respondent's father, who owned both the adjoining land and the land in dispute. The court further held that the 2nd appellant had

[29] Arum V. Nwobodo (2004) 9 NWLR (Pt. 878) 414

enough opportunity to prove his claim of inheriting the land from his father beyond any reasonable doubt but failed to do so. The trial court then gave judgment in favour of the respondent and against the appellant.[30]

The case was appealed to the High Court by the appellant. The High Court, however, dismissed the appeal because the respondent had evidence of being in recent possession of the land. The appeal was dismissed despite the respondent's failure to prove title to the land by traditional history. After the appeal was dismissed at the High Court, the appellant still felt dissatisfied and appealed to the Court of Appeal. The grounds of appeal were that: the respondent failed to prove adequate evidence of traditional history in support of his claim; the trial court wrongly applied the law to undisputed facts and excluded admissible evidence; and the trial court was biased against them in the court proceedings (Anyafulude, 2012).

The respondent filed a preliminary objection at the Court of Appeal because the appellant's appeal was of mixed law and facts. His preliminary objection further stated that the appellant should have obtained the leave of Court before filing the appeal but failed. After reviewing the submissions of both parties, the Court of Appeal held: If a person requesting the declaration of a title to land does not present evidence to support his claim based on traditional history, he must show proof of acts of ownership over a significant period of time to support the conclusion that he is the sole owner of the land. In the current instance, both parties based their claims for title to the contested property on long-standing customary history and actions of ownership. But the appellants offered no proof in favour of traditional history. Additionally, they did not call any witnesses from the next property to testify regarding their claim to the disputed property's title or their presence there. The responder, on the other hand, called witnesses to confirm his presence on the subject land. Given the

[30] *Ibid*.

circumstances, the respondent established he had a greater claim to the disputed land and was deserving of the ruling in his favour. [31]

All the decisions from the Trial court to the Appeal Court went in the same direction showing support for what the court termed a 'better' title. Is it substantive justice to ascribe judgment favouring the one with a 'better' title? Anyafulude (2012) thoroughly discussed the concept of substantial justice in customary courts. For justice to be substantial in customary courts, the judgment must satisfy the following conditions: devoid of technical rules of practice and procedure, flexibility in proceedings following the principles of fair hearing, pleadings and written addresses by Counsels are not part of the proceedings, and common law is not applicable in customary court proceedings. Customary court proceedings must show the delivery of substantive justice without legal technicalities. All the appeals to superior courts must also review the judgment of the minor courts without the lens of legal technicalities.

In sum, proving title to land in peri-urban areas is ascribed to the one who pleaded and tendered a 'better' title during determining ownership. 'Better title', in this instance, refers to a survey plan. It is also shown that when traditional history failed in the cause of proving title to land, evidence of acts of long possession must be provided. The analysis in this section shows that in some instances the land is allocated to people with 'better' title.

6.2.3 Customary landlord and customary tenancy

Case law recognises the right of a customary landlord to grant a customary tenancy.[32] Under customary law, customary tenancy emanates when a landowner grants to another person the use and possession rights of their land with the sole aim of paying tribute to the landowner (customary landlord) for the recognition of the title owned (Obumneme and

[31] Arum V. Nwobodo (2004) 9 NWLR (Pt. 878) 414
[32] Arugbajoye & Others v. Ogunmola & Others (2019: 70). See also Bangboye v. Oshoko & Others (1988) LPELR – 734 SC at pg. 23.

Emenogha, 2019). The legal nature of customary tenant is described by Elias (1974) as "customary land law parlance, the customary tenants have not gifted the land, they are not borrowers or lessees, they are grantees of land under customary tenure and hold as such, a determinable interest in the land which may be enjoyed in perpetuity subject to good behaviour."[33] However, the issue of customary landlord and customary tenancy is worth examining as to how the courts deal with disputes in this regard. The court has supported asserting that customary landlords' rights to tribute (or what the Yoruba called *Isakole)* have not been eroded. "*Isakole* is the money paid by a customary tenant to the customary landlord who granted the former permission to use the land for farming activities" (Babalola and Hull, 2019a: 21).

The interpretation of Section 1 of the LUA *vis-a-vis* customary owners has proved problematic. For instance, in Abioye v. Yakubu (1991), the High Court affirmed that the LUA never aimed to rob customary landlords of their rights as portrayed by customary tenants.[34] The Court of Appeal overturned the trial court's decision, stipulating that Section 1 of the LUA eroded the rights of customary owners to tribute.[35] In a final decision in the Supreme Court, the court affirmed that the LUA did not erode existing rights or interest in land.

Similarly, in Alabi & others v. Isaiah Alabi & Ezekiel Alabi,[36] a customary right of occupancy was granted to the claimants, among other claims sought after an exhaustive argument between the defence counsel and the claimants' counsel. Despite the defendants having permanent crops on the land in dispute, the court granted an order of perpetual injunction restraining the defendants, whether by themselves, their agents, servants, or privies, from

[33] Aghenghen & Others v Chief Maduku Waghorehor & Others (1974) 1 SC 1 at 6.
[34] Garuba Abioye v SA'ADU Yakubu 1991 NWLR Pt 190 30.
[35] Garuba Abioye v SA'ADU Yakubu 1991 NWLR Pt 190 9-10.

[36] Alabi & Others V. Alabi & Others (2017).

doing anything detrimental or prejudicial to the interest of the claimants.[37] The claimants were also awarded damages to be paid by the defendants for a total sum of 2 million Nairas only (5 700 USD).[38] This judgement does not align with the earlier decision in Salami v. Oke (1987) discussed above,[39] wherein it is stated that when permanent structures or other types of improvement, such as considerable commercial farming or occupation, have been built, the courts often view the customary tenant's claim as practically unassailable; thereon, the grantees.[40]

Another dimension was observed in a case between customary landlord and customary tenant (Ojos v. Anjorin 2016). The plaintiffs' claims are a declaration of the unlawful possession of farmland by the defendant, a perpetual injunction restraining the defendant, and payment of general damages. Both parties brought their witnesses to present their case. After that, the learned counsel for both parties presented their written addresses to the court. From the issues raised from the written address of the learned counsel, the Lordships raised one central issue "whether considering the facts and evidence before the court, the plaintiffs are not entitled to the reliefs sought."[41] All three claims of the plaintiff were upheld and against the defendant. Akindele (2016) stated that according to "Yoruba custom and traditions, particularly in land ownership, a person who unequivocally admitted that he is a tenant on land cannot turn around to challenge the title of his landlords only because he traced his tenancy to a single individual member. To do this, it amounts to the tenant disputing the title of his landlords or denying the overlords title of the land."[42]

[37] Alabi & Others V. Alabi & others (2017).
[38] *Ibid*.
[39] Salami v Oke (1987).

[40] Salami v Oke (1987).
[41] Ojos v. Anjorin (2016) para 86 pg. 9.

[42] Ojos v. Anjorin (2016) para 89 pg. 12.

In the cases examined in this section, there is inconsistency and contradiction in the line of the judgement of courts in respect of customary landlord and tenant issues. The majority of the judgements are in support of customary landlords against customary tenants. Even though a few exceptions exist, there is evidence presented here that i*n some cases* the legal system is unsupportive of, and insensitive to the plight of peri-urban dwellers.

6.2.4 Trespass issues

In many cases, trespass issues are part of the claims of claimants reflecting on all matters brought before the court because there is pressure on land in these three peri-urban areas. It is interesting to look at court cases dealing with trespass issues. In Olorijanbe v. Asana & others (2016), four issues were formulated for determination in the Writ of Summons and the Statement of the Claim of the Claimants against the Defendants: a declaration that the defendants are in trespass of the land as described in the Statement of Claim, a declaration that the claimants have the right to use the land as described in the Statement of Claim, a perpetual injunction restraining the Defendants from further trespassing on the land, and a sum of 2 million Nairas (5 700 USD) as general damages for the act of trespass committed. It is worth mentioning that the claimants, in this case, were the elder brother and wife of a person who died intestate, suing in their capacity as the personal representatives and next of kin to the deceased.[43]

The defendants' counsel formulated two issues from his written address before the court: whether the claimants have the *locus standi*[44] to institute the action before the court as the next of kin and personal representatives of the deceased; and if with the evidence and pleadings of the claimants they have been able to satisfy the court or prove their case on the

[43] Olorijanbe v. Asana & others (2019).

[44] The ability to start a legal action and bring it before a judge. Before being heard in court, a plaintiff must have this status. It is a prerequisite to the court's decision about the suit's merit. The entirety of the averments in the statement of claim might be used to answer the question of whether a plaintiff has the legal right to file a lawsuit (Adekeye 2011).

balance of probabilities as required by law. The claimants' counsel formulated one issue for determination from his written address before the court: "Whether, from the totality of the oral and documentary evidence before the honourable Court, Claimants are entitled to succeed in their claims as stated in the Writ of Summons and Statement of Claims."[45] The first issue from the defendants' counsel was on *locus standi*. Quoting from Section 2 of the Administration of Estates Law, CAP A1, Laws of Ekiti 2012, he stated that a letter of administration is required from a representation before you have a *locus standi* before the Court. He further noted that when the first claimant was cross-examined, he said he was not given any letter of administration. "Hence, Claimants' action as presently constituted is not competent in law; same is liable to be struck out for want of jurisdiction."[46] However, from the first claimant's evidence, he mentioned that the widow of the deceased mandated him to manage it.

Ogunyemi (2019) upheld the defendant's counsel's submission on the *locus standi* and thereby struck off the case. It was held that before legal proceedings in court, a letter of administration must be issued.[47] Hence the case was struck off for lack of jurisdiction without examining any of the claims before the court. The test for determining *locus standi* is that the action must be justifiable, and there must be a dispute between the parties.[48] None of these two instances, which are entrenched in case law, was put into consideration. The decision was based entirely on statute laws without observance of customary law.

When one dies intestate, what is the position of customary law? Aderemi (2001) states that when one dies intestate, customary law divides the deceased's estate unless the deceased is

[45] Olorijanbe v Asana & others (2019) para 70 pg. 14.
[46] Olorijanbe v Asana & others (2016) para 67 pg. 11.
[47] Olorijanbe v Asana & others (2016) parag 74 pg.18.
[48] Njoku v. Jonathan & others (2015) LPELR – 24496 (CA); Taiwo v. Serah Adegboro & Others (2011) LPELR 3133 (SC).

contracted in marriage under the Marriage Act.[49] None of this was reflected in the judgement. An approach that may have been more sensitive to the land rights-holders' situations would have been to apply customary law since the property falls within a peri-urban area. The superiority of statute law over customary law is exhibited in this judgement. The issue of technicalities comes out again over evidence.

Trespass is a severe issue that causes tenure insecurity which needs to be addressed but is left unattended because of *locus standi*. "Trespass is rooted in exclusive possession and actionable per se."[50] The unsympathetic nature towards a widow and an orphan is displayed in this judgement (see also Diala, 2018).

Another dimension to the above case is observed in Fajire and Omotoso v. Airtel Network Limited and Babalola (2020).[51] The land, in this case, falls within a peri-urban area, so the case should emanate from the customary court, which is not so. The plaintiffs sued the defendants in their capacity as the junior brother and the daughter of the deceased. The 1st defendant was a telecommunication company in Nigeria, while the 2nd defendant was a traditional head (Oba) joined by order of the court. The plaintiffs' claims against the defendants are general damages of 150 million Nairas (300 000 USD) and an order of perpetual injunction restraining the defendants from trespass and further trespass on four plots of land granted to the deceased by the 2nd defendants from the stool land. The 1st defendant had erected a telecommunication mast on the land after obtaining a leasehold from the family through the traditional head.[52]

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[49] Obusez v Obusez (2001) FWLR (Pt 73) 40, Aderemi JCA stated: 'Where however, a person subject to customary law went on to transact a marriage under the Act, this raises a presumption that the distribution of his estate shall be regulated by the Marriage Act. This presumption can be rebutted if the manner of life of the deceased is suggestive that the deceased wanted customary law to apply.
[50] Akilo & Others v. Odeyemi (2018: 12).
[51] Fajire and Omotoso V. Airtel Network Limited and Babalola (2020).
[52] Fajire and Omotoso V. Airtel Network Limited and Babalola (2020).

The allocation of land to the deceased was frowned on by the member of the stool family because the deceased was a stranger. Hence, an oral revocation notice was issued to the deceased, which the brother and the daughter refuted. The court passed a judgement awarding damages to the plaintiff for 5 million Naira (10 000 USD) and restrained the defendants from further trespassing on the land.[53]

When the issue of trespass is tied with an injunction before the court, the title is also put into issue.[54] In determining the title, the court stated that the leasehold of the first defendant depends on the validity or otherwise of the title of the 2nd defendant to the disputed land. It was further noted that the claimant proves ownership through customary grants, and the model used in establishing this is traditional evidence.[55] Who owns stool land if the court recognises customary grants and traditional evidence?[56]

Can a customary grant from stool land be withdrawn because the purpose of the grant was not fulfilled? Or can a grantee from a stool land grant a portion of the land to another stranger? These are issues relevant under customary law, which the court left uncovered. Relying on statute law, the plaintiff failed to fulfil the *locus standi* question, as seen in the above cases. In this instance, the plaintiff never tendered any letter of administration empowering them in the deceased's estate. The court did not consult case law before reaching the final decision of granting the reliefs sought by the claimants.

Addressing the trespass issue causes tenure insecurity as there are irregularities in court judgements. As presented in this section, case laws are not followed as precedents for subsequent judgements in some cases. Customary law is equally suppressed using statute

[53] *ibid*. pg. 52
[54] Oyeneyin v. Akinkugbe (2010) 4 NWLR (pt. 1184) 246 at 253.
[55] Fajire and Omotoso V. Airtel Network Limited and Babalola (2020) 30.
[56] This is a form of absolute land interest vested in the office and not the individual officeholder. The land, in this case, is permanently attached to the office. The land was attached to the offices of the Obas in the South and the Emirs in the North.

law. When people die intestate and never contract marriage under the Marriage Act, their property is expected to be subject to customary law, which is flexible and devoid of legal technicalities.

6.3 Legal Pluralism in Ekiti State: Organisational Studies using Institutional Isomorphism Theory

This section uses the lens of institutional isomorphism theory to analyse the findings in section 6.2 and the case study narratives in Chapter 5, drawing from the theoretical framework discussed in section 3.4. when considered through the lens of institutional isomorphism theory, institutions of land administration in Ekiti State may be considered illegitimate. In Chapter 3, the theory of legitimacy was examined.

Institutional isomorphism theory is gaining relevance in the study of organisations and institutions. In the last four decades, institutional isomorphism theory has been most influential. Central to this theory is the insight into social processes (Wooten and Hoffman, 2017). Also, organisations are entrenched "within broader systems of meanings and networks of relationship" (Shahar, 2012: 137). The notion of the organisational field is central to institutional theory,[57] wherein it is shown that the customary court as an organisation can only be recognised by its relations with other organisations it interacts with or relates to within the Nigerian legal system as a distinguished field of institutional life. These other organisations may be different courts (see section 5.2.5), the Ministry of Justice, and the Ekiti State House of Assembly. Also, state agencies outside the confines of the legal system are inclusive, such as the police, Ekiti State Bar Association, prison administration, and human rights organisations. Institutions of land administration in Ekiti State may be considered illegitimate to peri-urban dwellers because the design of Ekiti State LAS excludes customary law and administration, considering the above. The following section examines land cases in customary courts using conflicting isomorphic pressure.

[57] see the definition of the organisational field in section 1.2.8.

6.3.1 Managing Conflicting Isomorphic Pressure

This section examines the judicial, procedural, and administrative processes of customary courts. The focus is on determining substantive justice as it relates to land matters. The concept of substantive justice relates to form and substance but is devoid of legal technicalities in customary law. The analysis in this section is based on the customary court decisions in Southwest Nigeria. Firstly, it examines two land-related cases in the customary courts in Ikere-Ekiti and Ijero-Ekiti. Other land-related cases issued by the customary courts and CCAS are also examined because the Customary Court of Appeal does not exist in Ekiti State. The former two are already analysed in section 6.2.1. The principles of practice and procedures of customary courts in Nigeria are explained by Anyafulude (2012), including the concept of substantial justice in customary courts. For justice to be substantial in customary courts, the judgement must satisfy the following conditions:

- devoid of technical rules of practice and procedure,
- flexibility in proceedings,
- following the principle of fair hearing,
- pleadings and written addresses by counsels are not part of the proceedings, and
- common law is not applicable in customary court proceedings (Anyafulude, 2012).

Common law is part of statute law. These conditions are explained in detail below.

6.3.2 Devoid of technical rules of practice and procedure

The first and most important rule is that any document or object presented during the proceedings of a customary court should be admitted without being subjected to technicalities of admissibility (Anyafulude, 2012). The issue of the Evidence Act No. 80 of 2011 does not apply to customary court rules (*ibid*). Admissibility should not be based on proper custody of primary documents, lack of signature or improper execution, or failure to comply with the Illiterates' Protection Act (*Ibid*: 428-429). Any document presented to the

customary court should be examined and its relevancy determined without reference to the provisions of the Evidence Act. The central aim of the customary court is to provide substantive justice. The process of determining relevance will help identify fraudulent evidence.

In Afolabi v. Olayinka & Bayo (2017), the plaintiff appealed to the customary court for a declaration for possession of land, restraining the defendant from entering the land, general damages for trespass, and special damages caused by the defendant on the plaintiff. The legal counsel for the plaintiff formulated three issues for determination: whether the plaintiff had satisfied the court based on the evidence provided (that the defendant trespassed and damaged the crops on his farmland); whether the court could admit the conflicting statement of the defendant regarding the dates of the incidents; and whether from the preponderance of the evidence and on the strength of the plaintiff's case, he is entitled to an award of damages. The court rejected the submission based on conflicting dates. However, general damages were granted on the recognition of damages, while special damages were refused because the stipulated procedural principle was not followed. Finally, the cost of litigation was awarded against the defendants.

In this case, the proceedings seem to follow that of superior courts, i.e., based on legal technicalities. Also, pleadings are not part of the customary court proceedings. Pleadings are a procedure that requires technicalities about which most peri-urban dwellers are not knowledgeable. Anyafulude (2012: 432) states, "in some customary courts, chairmen, especially lawyers, order pleadings and written addresses to be filed by parties. This procedure defeats the essence of the customary system, whose main characteristics are flexibility and simplicity in the procedure." Customary courts are also not meant to apply common law rules in their proceedings (Anyafulude, 2012).

In some cases, it is suggested that pleadings are inappropriate in customary court proceedings. Anyafulude (2012) cites a 2004 case[58] that held that the cardinal principles governing the proceedings in customary courts are the attainment of substantial justice based on the reasonable practice, tradition, and custom of local people.

In Ojos v. Anjorin (2016), the defendant produced the Yoruba and English versions of the tenancy agreement between the first witness and the defendants. The defendant used this tenancy agreement in ascertaining his occupation of the land, referring to the documents as "dangerous" because they could be used to claim ownership of the entire farmland if care is not exercised. The land area is not specified in the agreement, and the concern is that such a lack of specificity could allow the holder of such documents to claim ownership of the entire land. These documents remain invalid because of this singular error. In this vein, the President of the Customary Court rejected these documents, possibly based on the rules in the Evidence Act and the technicalities of law. The learned counsel to the plaintiff used these arguments and the Customary Court's President upheld their case. Allowing learned counsel in customary court proceedings is against the rules of customary court. The customary court proceedings should determine relevance rather than technicalities.

In the declaration of title to land, a land case and matter arose in a customary court between Amudipe v. Faleye (1975). The defendant's witness tendered a survey plan to be admitted as evidence. The plaintiff's counsel argued against the admissibility of the plan as part of the evidence in the court proceedings because (1) the court rule did not allow for the tendering of a plan by the defendant and (2) the plan to be tendered had yet to be filed in the court

[58] Arum v. Nwobodo (2004) 9 NWLR pt414.

and (3) the plan was yet to be served on the plaintiff. The President of the Customary Court upheld the objection by the counsel. The judgement was in favour of the plaintiff.[59]

The defendant was dissatisfied and appealed to the High Court, where the Judge held that the trial court's rejection of the plan was entirely wrong. The appeal was upheld, ordering a retrial. The plaintiff, now dissatisfied with the judgement of the High Court, then appealed to the Court of Appeal, where the Judge supported the decision of the High Court, thus rejecting the trial court's decision. The issue, in this case, is another on technical rules and procedures that counsel imported into customary court proceedings. It is the rules of customary court that any document so tendered must be admitted and relevance to the case at hand determined. Again, the issue should provide substantive justice over technicalities in proceedings.

Based on the technical rules of the customary court, the customary court may be understood through the institutional theory of mimetic isomorphism. To maintain legitimacy and relevancy within the two organisational fields (Nigerian statute law organisational field and the Nigerian customary law organisational field), customary courts imitate their counterpart in the Nigerian statute law organisational field. One of the strategies for an organisation to maintain or gain legitimacy is to refrain from engaging in evident legitimation efforts in favour of adopting more subtle techniques. The mimetic aspects identified in this investigation relate to the importation of pleadings, the use of legal counsel in the proceedings, and importing common law principles (such as determining *Locus standi*) within customary courts.

[59] Amudipe V. Faleye (1975) NMLR 398

6.3.3 Flexibility in proceedings as per principles of fair hearing

Flexibility is key in customary court proceedings to attain substantial justice. A fair hearing is the basis of all adjudicatory processes, whether from superior or lower courts. No matter how the proceedings of a trial are conducted, if they lack any principle of fair hearing, the proceedings are invalidated.[60] When customary court presidents are lawyers, written addresses are accepted from counsels. The acceptance of written addresses is against the core of the customary court system, whose main characteristics are flexibility and simplicity in the procedures (Anyafulude, 2012). Written addresses by counsels introduce legal technicalities into the proceedings of customary courts, removing the customary court's simplicity and flexibility characteristics. Applications for an extension to file pleadings by parties are sought before a customary court. This may be considered not to provide substantive justice, which is key to the tenets of customary court. Hence it should be disallowed. It was held in Arum v. Nwobodo (2004) that it is inappropriate to allow pleadings and strict rules of procedure and evidence before a customary court.

> *The cardinal principle governing the court's proceeding is the attainment of substantive justice based on the local people's reasonable practice, tradition, and custom. Consequently, in reviewing the court's decision, an appellate court looks only at the stated facts and the court's application of the facts to the issues raised to determine if substantive justice has been done or, in other words, whether the decision of the court accords with common sense. In the instant case, although the respondent did not adduce much evidence of traditional history to warrant judgement in his favour on that score, he gave evidence of other acts of ownership or assertion of ownership, which the appellate High court accepted in the course of its review of the proceedings before the trial court. And there were no pleadings in the trial court; it is not correct, as contended by the appellant, that the only ground upon which the respondent rooted his title was traditional history. In this circumstance, the decision of the appellate High court was based on the preponderance of the evidence adduced by the parties before the trial court.*[61]

In the cases discussed in Section 6.3.2, flexibility was not observed. There were technicalities in the rules of procedures and legal counsel represented both parties. Both are against the rules and policies of the customary court. In Afolabi v. Olayinka & Bayo

[60] Salihu v. Egeibon (1994) 7 NWLR (pt. 348) 23.
[61] Arum v. Nwobodo (2004) 9 NWLR (Pt. 878) 413.

(2017), the claim of special damage was refuted since it was not pleaded during the proceedings. In Ojos v. Anjorin (2016), some documents tendered by the defendants were rejected, stating that they are "dangerous documents". All these derive from the Evidence Act rules, which apply in superior courts but not in customary courts. In the two cases, legal counsel representing both parties indicated that the rules of superior courts are imported into the customary court proceedings because they are trained according to the common law (see section 5.2.4).

In sum, the proceedings of the customary court are required to be simple and flexible. Two forms of documents are essential in the proceedings. These are the document containing the plaintiff's allegation and the document containing the response from the defendant. These documents are written in literal terms and do not require a lawyer or legal terminology. Using a statement of claim and statement of defence is not applicable. Statements of claims and statements of defence are the instruments used during High Court proceedings (Anyafulude, 2012).

The appointment of lawyers trained according to common law principles as presidents of the customary courts is what institutional theory refers to as coercive isomorphism. Such a position reflects the pressure from the Nigerian statute law organisational field into the Nigerian customary law organisational field. The pressures are from the legal and political environments, formal pressures exerted on the Nigerian customary law organisational field.

6.3.4 Applicability of common law in customary court proceedings

In section 5.2.4, the common law is briefly explained along with its insertion into the Nigerian legal system. The common law practised in Nigeria evolved from British customs. This section examines whether customary court presidents observe common law in customary court proceedings. The approach of the customary court president to the observance of common law reflects strongly in many instances. As exemplified in the case

of Agubuchi v. Onwudinjo (2011), [62] the plaintiff sued the defendant for the declaration of title to land, injunction, and an order to remove charms on the land. After both parties presented their case, the President of the Court gave judgement in favour of the plaintiff. The defendant was dissatisfied with the judgement of the customary court and appealed the decision to the Customary Court of Appeal. Issues for determination were whether oath taking by parties (as ordered by the customary court) was appropriate; whether the judgement of the lower court was justified by the evidence and circumstances of the case; whether the customary court exhibited elements of bias in its judgement; and whether the customary court was correct to rely on extraneous matters in reaching its decision. The appeal was upheld.

The president of the customary court's reliance on oath-taking as part of the proceedings in a customary court typifies the import and influence of statute laws on customary laws of resolving land cases. Indeed, oath-taking is an import of colonisation in court proceedings. An oath is taken by everyone participating in the resolution of the dispute in statutory courts. In applying the rules and practice of customary courts, the proceedings must be flexible and devoid of any common law principles. However, Anyafulude (2012) states that oath administering is a way of determining the truth of a matter under customary law which is binding on parties if their custom permits.[63]

6.3.5 Coercive and mimetic isomorphism: conflicting pressures on customary courts of law

The customary court and the CCAS are exempted from observing the rules of the Evidence Act, which enactments are based on common law. However, the customary court and the CCAS observe customary law and common law rules in determining cause and matters relating to land. This is exemplified in the cases discussed above.

[62] Agubuchi V. Onwudinjo & 2 others CCAE/E/2/2010.
[63] See also Ume v Okoronkwo (1996) 10 NWLR (pt. 477) 133.

The most important part of this analysis is the role of customary courts and the CCAS in their direct link between the judicial reform by the superior courts of records and the pressure exerted on customary courts within Nigeria's southern state-law organisational field. Several judgements show the effect of the direct attack of judicial reforms on the CCAS within its organisational field. This impacts the jurisdiction of the CCAS to address issues emanating from minor courts of records in determining customary law. The State High Court usurps the role of appeal, although both must stand as superior courts of record in their organisational field. The Constitution created the constitutional gap, which has fed into the ongoing challenge of the State High Court on the jurisdiction of the CCAS. The Constitution legally institutes the establishment of a State High Court while the establishment of the CCAS is not - it is left to the relevant state to decide on its establishment and legal jurisdiction.

The judicial interpretation of the jurisdiction of the CCAS as specified by Section 282 (1) & (2) of the Constitution shows an external pressure of influence to reduce the legitimacy of the CCAS. In subsection (1) two roles of appellate and supervisory jurisdiction are accorded to the CCAS in civil proceedings involving questions of customary law. Subsection (2) reiterates that the CCAS shall exercise such jurisdiction and decide such questions of customary law as the House of Assembly of the respective state may be stipulated. Appellate and supervisory jurisdictions mean that the CCAS can hear normal appeals and entertain supervisory matters that do not usually come before it as a form of appeal. The CCAS supervisory jurisdiction in an appellate capacity is undermined. Despite having original jurisdiction to overturn a judgement alleging a breach of principles of fair hearing using a prerogative, it is disallowed to entertain a ground of appeals alleging breach of fair hearing.[64] The implication is that when a customary court fails to exercise its jurisdiction or

[64] C.C.A Edo State v. Aguele (2006) 12 NWLR (PT 996) 545.

provides a fair hearing, an aggrieved party seeking redress can only approach the High Court of a state.

To prevent further conflict, the CCAS has to accommodate the main norms, values, and logic of the Nigerian Statute law organisational field. To maintain its legitimacy and status within its organisational field, the CCAS needs to adjust and maintain its jurisdiction as stipulated by the Constitution. As regards institutional isomorphism theory, the process of coercive isomorphism also contributes to the jurisdictional judicial reform initiated by the Constitution. The CCASs were mandated to reduce their jurisdiction to civil causes and matters only and even further reduce the civil causes and matters discussed in the preceding paragraphs to manage and maintain legitimacy (see sections 3.5.3.1 and 3.5.3.3) within the Nigerian statute law organisational field. The observation that this external pressure on the CCAS causes diminution of the jurisdiction of the CCAS suggests the relatively marginal position of these courts in comparison to those in the statute law organisational field.

As regards institutional isomorphism theory, the process of mimetic isomorphism is what customary courts and the CCAS display to increase their legitimacy. They are manoeuvring between two organisational fields: an organisational field structured around customary law and an organisational field structured around Nigerian statute law. It may be argued that customary courts and the CCAS suffer from a persistent lack of legitimacy in the Nigerian-statute law organisational field. The presidents of customary courts adopt an approach that institutional theorists would expect them to adopt under the conditions of uncertainty to improve their reputation within their organisational field. The customary courts mirror other organisations and attempt to adopt practices outside their organisational field.

In addition, a mimetic isomorphism is displayed in the regulatory process of appeal in the customary courts. The appeal procedure mirrors the appeal process imported in the colonial era (Diala, 2019) with the appeal from the Customary Court to the Customary Court

of Appeal and then to the Court of Appeal (Common law court) and finally to the Nigerian Supreme Court (Nwauche, 2015).

The hierarchy in courts may attempt to reduce the legitimacy of customary courts and (especially) the CCAS. The court hierarchy is shown in Figure 5-1, with the CCAS at the same level of authority as the state's High Court. However, the CCAS jurisdiction is limited despite being theoretically at the same level as other superior courts of record. This jurisdictional limitation undermines well-functioning legal pluralism. Now that Constitutional provisions limit the same court of the same authority, a naturalised hierarchy of moral and legal authority is established and well-entrenched in the organisational systems.

6.4 Land Administration and the Legal Framework in Peri-Urban areas of Ekiti State

The observance of customary law in courts of law in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti is questioned. The use of customary law in minor and superior courts of law to protect land rights holders and interest holders against external influence shows a lack of protection. The reader is reminded that in the three peri-urban areas studied, land matters are rare in customary courts, with most of the land matters being heard in the High Courts. This might be due to a lack of legitimacy of customary court or the non-establishment of CCAS in Ekiti State. There exists a gap in the customary law observed in the customary court, the CCAS, and high courts and the customary law practised in the peri-urban areas. Three factors (legal, political, and social) explain this gap. The legal factors are modifications of indigenous land tenure, distortions of indigenous law in the courts, and modifications in indigenous courts (see also Diala, 2019). The political factors relate to the influence of the political configuration in the peri-urban areas on the judicial decisions regarding peri-urban practice. The social factors are associated with the distortion of traditional governance.

6.4.1 The legal factors

There is a wide gap between the indigenous practices of the people of peri-urban areas and the customary law observed in law courts (Woodman, 1987). This gap may be due to the modifications of land tenure, distortions of living customary law in courts, and modifications within the customary court system.

This aspect deals with the distortions of land tenure, living customary law, and the customary courts. For instance, in the present situation, new land tenure was created with the enactment of the LUA of 1978, which relates to rights of occupancy in both customary and statutory areas. This tenure is alien to living customary law rooted in individual ownership. The rule of customary land tenure debated in courts of law is related to a distorted land tenure system that originates from a land policy purported to be a model of colonial enactment.

The living customary law is distorted, resulting in what Ubink (2002) and Diala (2019) term *judicial customary law* or what Woodman (1987) refers to as *lawyers' customary law*. 'Judicial customary law' results from the courts' inability to convert all customary norms into legal orders. Uncertainty results from social changes, the adoption of common law practices that prevent the adoption of customary norms, and differences in the procedures of settling disputes between local dispute settlement institutions and the state courts (see Ubink, 2002). Lawyers' customary law occurs during court proceedings when expert witnesses are called for questioning. The questions are asked to elicit answers which can then be embedded into the established reasoning process. Hence, before the judge receives the information, the lawyers' customary law has already biased the proceedings. In creating lawyers' customary law, the legal system uses various forms of information and misinformation. These two forms of law are observed in the proceedings in the court judgements analysed in sections 6.2 and 6.3.1, where judges and lawyers interpret living customary law.

Judges sometimes struggle to determine the applicable rule of customary law. Apart from instances in which the court president is selected from the area where the customary court is situated, the superior court judges are rotated from one court to the other. Ascertaining the customary law of the area is problematic; even within a locality, there are diverse forms of living customary law.[65]

The fusion of the executive and judicial powers is used to distort indigenous law. Autonomy and self-determination are essential in allowing indigenous law to evolve. Ubink (2002: 30) asks, "Who is the lawmaker in customary law? Is it the people who by practising a certain custom turn it into law, or is there a special role for Chiefs in this respect?" In answering the question, land in Asantehene, Ghana, belongs to the chief, and the families and individuals cannot sell land without the authority of the chief. This is the customary law the court should observe, showing that custom bestowed this on the Chief as the sole alienator of land. Custom may empower the chiefs to legislate. When such power is used, it may be through customary law because customs are the source of legitimacy. The Constitution may also define the customary law corpus, as seen in Ghana (Article II of Ghana Constitution, 1992). Practise and observance are vital to the continuance of customary and living customary law of the people.

Cultural affiliations of the communities are not recognised in the jurisdiction where the courts were located (see also Diala, 2019). How the court evolves from native to customary courts is discussed in section 5.8. The relegation of chiefs in these local courts was explained as well as the first attempt to separate the culture from the practice in the courts. This results in the courts relying on precedent for the rules and principles of customary law over the local norms and usage when addressing land cases.

[65] This is similar in the majority of sub-Saharan African countries like Ghana, Zambia, Kenya (Ndulo, 1981; Ubink, 2002).

6.4.2 Social and political factors

The political configuration facilitated in the Constitution and land policy is important in this respect. These distortions occurred in the colonial era and continued in the post-colonial period. Considering the cases analysed in minor and superior courts in this chapter, is customary law as pronounced in these judgements observed in the peri-urban areas? Such land is administered customarily using the family heads, chiefs, and Obas. For customary society, norms and rules are sources of power and legitimacy. In Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti, the knowledge of statute law and court decisions is limited. Customary members hardly reference the Constitution and land policy to administer or lay claim to the land. It is a constitutional provision that land is vested in the state governor who holds such land in trust for the people. The constitutional deficiency is a gap between the law and practice. Handing down judgement is one thing; enforcement is another issue entirely.

The constitutional deficiency relates to a lack of cultural recognition of the role of the customary legal framework in land administration. The Constitution lacks support for local land management, land dispute resolution mechanisms, and the principles that drive a pro-poor land policy. The interference in the role of chiefs' and Obas' affairs, from the national to the local level, translates into interference in local land administration. The position of chieftaincy is undermined in that a community member can take the Oba to court over land issues. This situation is unlike in Ghana, where the government did not interfere with chieftaincy affairs in local land administration. Community members cannot take the chief to court over local land management (Ubink, 2002). Traditional leaders have an organised structure that deals with erring ones (see section 5.7). Hence traditional leaders can be held accountable through the traditional system in place. This attitude of the government interfering with the Obas' administration of land reduces the legitimacy of the customary legal framework of land administration.

The functioning of state institutions in land administration is fully reflected in the narrative in Chapter 5. In Chapter 7, SSM is used to model the problem situation while RLM and FFPLA are used to assess land administration institutions, such as MHUD and BLS (7.6 and 8.6). It is apt to state that these institutions strongly control local land administration in peri-urban areas. From the findings in Chapters 5 and 7, all land administration activities focus on urban centres. Internal factors pertain to corruption and mismanagement, which affects the legitimacy of the land administration institutions in the eyes of the peri-urban populace. External factors include the Constitution and the land policy failing to recognise the roles of chiefs in land administration adequately.

There are several other ways in which the state undermined the role of the Obas in land administration. Firstly, the promulgation of the Land Use Decree No 6 of 1978 during Olusegun Obasanjo's regime (1976-1979) eroded traditional rulers' political and economic base (Chizea and Osumah, 2015). The enactment of the decree removed the power and control of land from the traditional leaders (*ibid*.). Tenure, land law, and administration were affected. The distinction between urban and rural land was evident according to the provisions of the land policy. Traditional rulers were not included in rural land administration, despite all the land in rural and peri-urban areas being held under customary land tenure. Secondly, social relevance was undermined, making traditional rulers compete for what Ukpokolo (2012) termed the “space of power” in the Constitution.

6.5 Summary

In addressing objective 2, this chapter shows how customary land law is observed in courts of law, the organisational-institutional view of courts of law using the dynamism of legal pluralism, and the administration of land and courts in peri-urban areas. Research question 2 asked how land disputes are resolved in regular and customary courts, how customary the customary court and CCAS is, how customary law is applied in customary courts, and how the customary court is managing in pluralistic environments?

The first question asked how land disputes are resolved in regular and customary courts. Sections 6.2 and 6.3 presented land cases from both regular and customary courts. Considering proving title, ownership, and trespass issues, the party with a 'better title' and the ability to plead is adjudged as the land rights holder. All these are indications that access to justice in statutory courts in peri-urban areas is not ensuring the security of tenure for peri-urban dwellers. The above analysis shows that the effort of the Ekiti State government in ensuring tenure security is inadequate. The case analysed indicates that the court processes may increase tenure insecurity for the vulnerable, women and the poor since the principles of customary law and customary court processes are not followed. In resolving disputes in customary courts, technical rules, inflexibility and application of common law are observed.

The second part of the question asked how customary the customary court and CCAS is. In section 6.3.5, a coercive and mimetic isomorphism is displayed by customary courts and CCAS. The constitution limits the jurisdiction of CCAS to civil causes and matters. This jurisdictional limitation contributes to coerciveness. The jurisdictional issues show external pressure of influence. This external pressure reduce their legitimacy. To maintain their legitimacy customary courts and CCAS accommodate the main norms, values, and logic of the Nigerian Statute law organisational field. This situation made them display mimetic isomorphism by mirroring other organisations and attempt to adapt to practises outside their organisational field. There are instances where matters emanating from customary court cannot be entertained in CCAS. the appeal process from customary courts ends in a statutory court.

The third part of the question asked how customary law is applied in customary courts. As is shown in sections 6.2 and 6.3.1, it is observed that the process of observing customary law is defective. The distortion in indigenous law results in judicial or lawyers' customary law (Ubink, 2002; Woodman, 2019). Furthermore, the mode of appeals from the lower court to higher courts bypasses possible customary appeals processes. The appeals from

customary courts end in a statutory court, which shows the extent of control on customary land management. Specific issues were observed in the land judgements, especially the importance of technicalities over evidence. For instance, in Aderibigbe v. Incorporated Trustees (2018), wherein the claimant sought a declaration of customary rights of occupancy, this was refused because the claimant did not convince the court.

Lastly, question 2 further asked how the customary court and CCAS manages within a pluralistic environment. As seen in section 6.3 the organisational-institutional perspective was used to analyse the customary court and CCAS of law processes to determine the dynamism in which the customary court operates. The institutional isomorphism theory was employed as a lens in the organisational-institutional perspective. The analysis showed that customary courts work within two different organisational fields: first, an organisation field structured around Nigerian statute law and, secondly, an organisational field structured around customary law (Yoruba customary law). These courts operate within a pluralistic, complex, and bifurcated institutional environment (see also Shahar, 2012). For the customary courts to maintain their legitimacy in both fields, they mimic the processes and principles of the Nigerian statute law organisational field. Incorporating norms from one field might risk their significance in the other. However, those actors with control, i.e., the lawyers involved, are schooled in the Nigerian statute law organisational field, registered for practice in that field, and progress in their careers within it. It is strategic for them to incorporate Nigerian statute law processes and principles within the customary court domain to increase their work's legitimacy and advance their professional practice. On the other hand, few hold power and influence to advocate for the customary court principles and processes to be followed.

The manoeuvring capacity of pluralistic organisations makes them dynamic, adaptive, and pliable (Kraatz and Block, 2008). Customary courts develop a “dynamic legal culture”, which means a culture that accepts adaptations, organisational transformations, and reforms (Shahar, 2012: 155). As highlighted, this adaptation may not result in pro-poor service

delivery (especially land tenure security) to the people the customary courts and systems serve. Finally, the chapter discussed legal, social, and political factors that are the causes of the difference between the customary law observed in the courts and the customary law practice in society.

The extent of control of customary land management, the extent of tenure insecurity experienced by peri-urban dwellers, and how the customary courts are managing within a pluralist environment, have been explored. It is shown that customary courts are not managing well, requiring reform of customary court processes to reflect indigenous knowledge of resolving land disputes.

The next chapter presents different case study narratives of the current LASs with their legal frameworks using the SSM and the pro-poor analytical tools of RLM.

7 Case Study Narratives: Peri-Urban Ikere-Ekiti, Ijero-Ekiti, Oye-Ekiti

7.1 Introduction

This chapter is based on peri-urban land administration in the case study areas with details of customary and statutory land administration. Peri-urban areas of Ekiti State are the subject of the case studies for this research, where Ekiti State has a population of over two million people - 2 384 212 (Government of Ekiti State, 2016). A map of the case study areas is shown in Figure 7-1. The case study areas mix customary and statutory law, tenure, and administration. A brief discussion of the case study areas is presented in section 7.2.

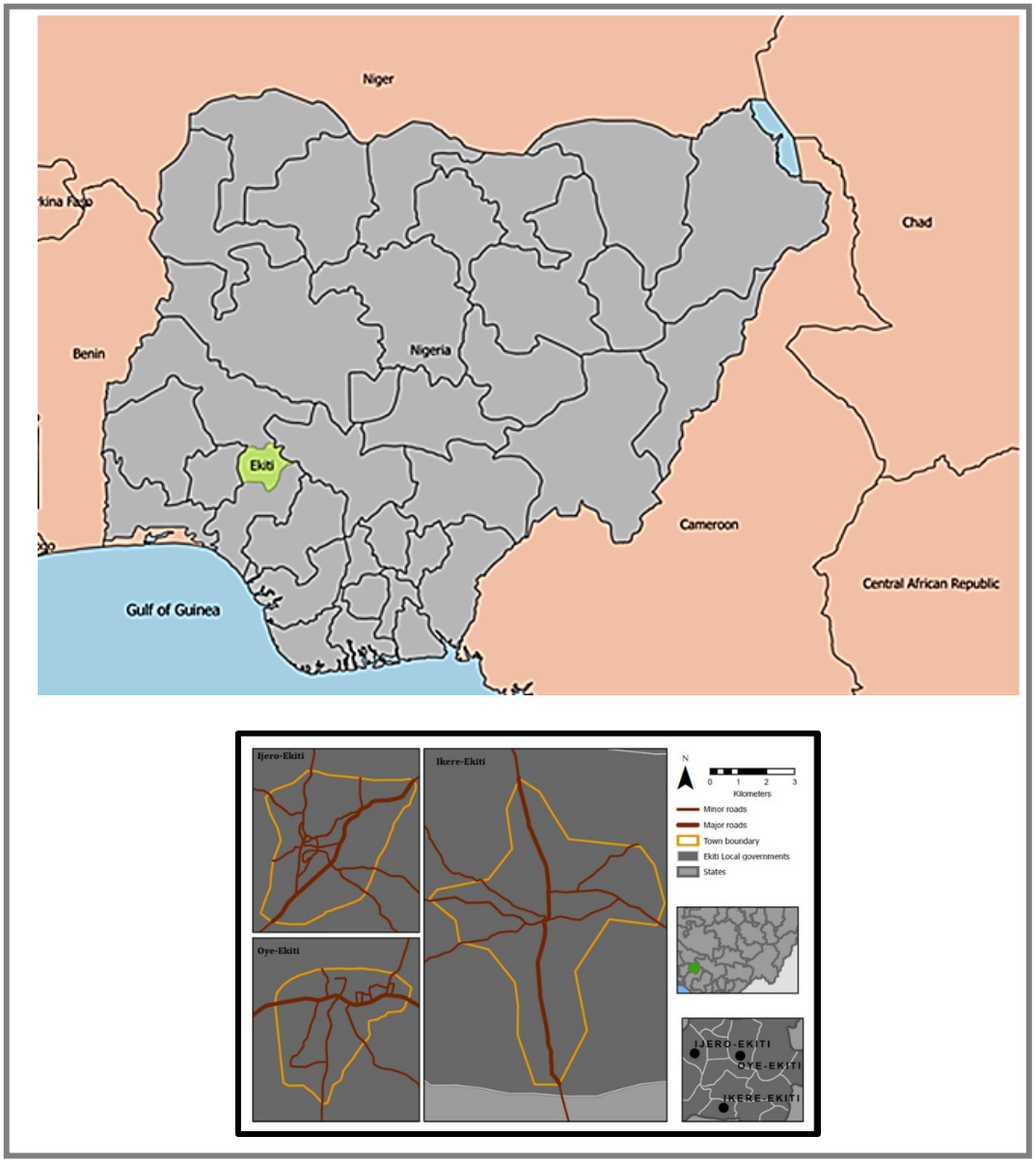

Figure 7-1. Nigeria identifying Ekiti State Showing the Location of Case Study Areas

The narrative in this chapter is informed by the case narratives in Chapter 5 and the data collected in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti. The structure and processes of the current LASs with their legal frameworks are modelled using the SSM, which provides narratives of the current LASs with their legal frameworks. The modelling of the structure and processes are conceptualised from different perspectives providing an understanding of the system while simultaneously identifying the existing problems.

Section 7.3 develops a case narrative of MHUD and BLS with SSM used to produce a rich picture and to investigate the CATWOE elements. The problem situation of MHUD and the BLS is discussed using the legal, organisational, social, economic, and technical systems models in section 7.4. Section 7.5 uses the two streams – cultural and logic-based streams – to structure the MHUD and BLS. The case study narratives are provided in section 7.6 using the 8R indicators of RLM. Section 7.7 summarises the key findings from the analysis in this chapter.

7.2 Case Study Areas Description

7.2.1 Description of Ikere-Ekiti Kingdom

7.2.1.1 Background information

Ikere-Ekiti is the third-largest town in Ekiti State in the Ekiti Central Senatorial district of Ekiti State and is the gateway town to Ekiti State from Ondo State (Aladeojebi, 2016). Ikere-Ekiti is the administrative headquarters of the Ikere local government. It is approximately 15,8 km from Ado-Ekiti, the capital city of Ekiti State. The population of Ikere-Ekiti was 202 500 based on population estimation in 2016 (City Population, 2022), and it is the fastest-growing town in Ekiti State. Ikere-Ekiti serves as a hub for administrative and economic activities in the central district of Ekiti State. Administrative activities in Ikere-Ekiti revolve around the local government secretariat located in the town.

7.2.1.2 Economic activities

Economic activities include cash and food crops accounting for the major economic pursuit of the people (Ogundare, 2016). Cash crops such as cocoa, kola nut, and oil palm serve as

the main export, while food crops such as yam, maize, cassava, cocoyam, rice, and plantain are planted on a subsistence level (*ibid*.). Minerals such as Charconite granite are found in Ikere-Ekiti, contributing to economic activities. A mixture of Christianity and Islam is practised, with Christianity predominant in Ikere-Ekiti. The original inhabitants of Ikere-Ekiti are Iro, Odo-Oja, and Okekere Quarters, while the Afao, Are, Iluomoba, Agbado, and Oyo Quarters settled in the area in the early 19th Century (Adeyemi, 2014).

7.2.1.3 Legal framework

A mix of a customary and statutory legal framework is used in Ikere-Ekiti for land administration. Customary laws of Ikere-Ekiti are used in customary land administration, with land access predominant through the customary land tenure system. Land is controlled by the Ogoga (king) in council, holding community land in trust for the people and providing access to land based on need (see Figure 7-2). Concerning the current traditional arrangements, the tenure institution of Ikere-Ekiti customary areas is administered by the Ogoga, the head of the chieftaincy institution's traditional leader (see Figure 7-2). Next in the hierarchy is Safety, followed by the Ologotun, Asao, and Eesa. In, titles are used to describe the hierarchical position and not the names of the individual. Assisting the traditional leader from the Iro Quarters are the Lare (administrative) Chiefs headed by the Sapetu of Okekere Quarters and the Elegbe (War) Chiefs led by the Esemore in Odo-Oja Quarters (Adeyemi, 2014). The Women Chiefs are responsible for market matters and women's affairs. Ikere-Ekiti has a land allocation committee that oversees all land allocation matters and reports to the Ogoga (*ibid*).

7.2.1.4 Land tenure in Ikere-Ekiti

Land in Ikere-Ekiti comprises customary land and statutory land. Customary lands are communal land, family land and stool land while statutory lands are private or individual land and state land. Collective interest in land remains with families enjoining usufructuary rights, which permits farming, fishing, dwelling, hunting, and other purposes as allowed by the community. The patrilineal inheritance system is practised (land and other property are passed from the father to the eldest son). Women are excluded from inheritance; they only

have user rights on agricultural land. Non-indigenes can access land for agricultural purposes through customary tenancy, pledges, gifts, and outright purchases. Most land purchases are converted to statutory tenure, making it the subject of statute law. The statutory assignment is the origin of individual landholding in Ikere-Ekiti.

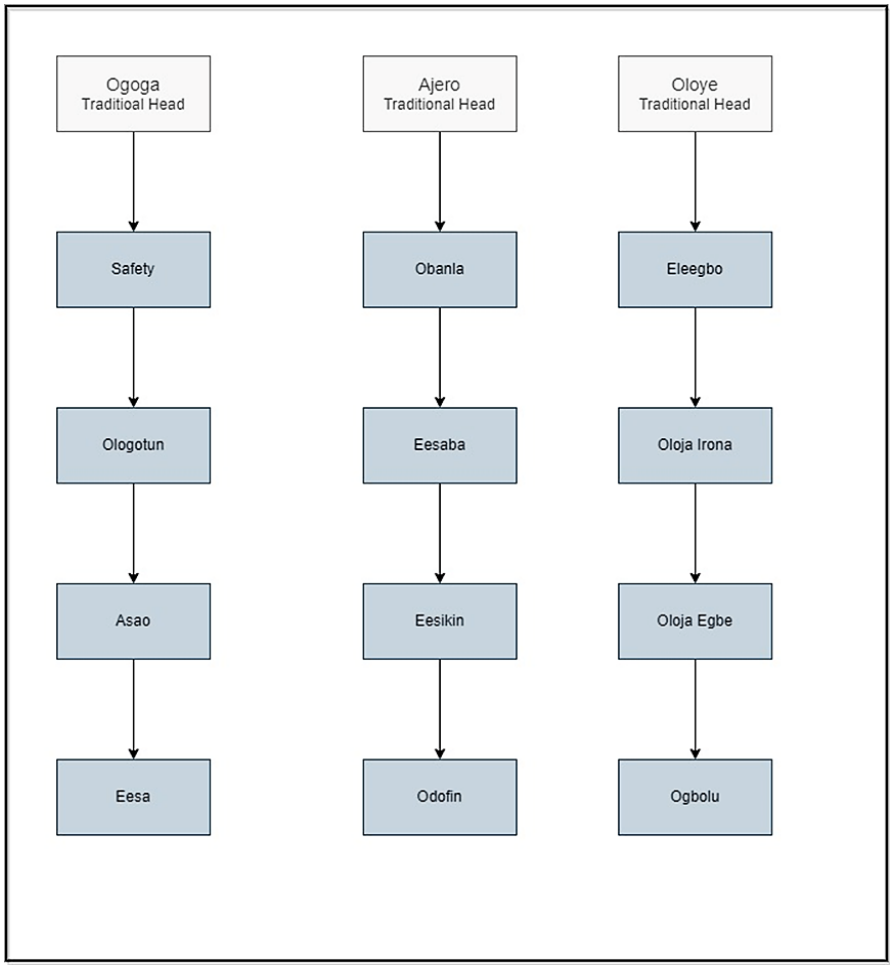

Figure 7-2. Hierarchical Customary Institutional Structure in Ikere -Ekiti, Ijero-Ekiti, and Oye-Ekiti

The indigenous community of Ikere-Ekiti has built structured traditional institutions. Hence land ownership has always been vested in the traditional leaders except during colonisation. Colonisation brought the divide where land in rural areas alone was vested in the chiefs, and the land in the urban areas was vested in the Governor. After colonisation, independent Nigeria adopted a land policy based on the colonisers, nationalising all lands, and vesting the same in the Governor of each state.

7.2.2 Description of Ijero-Ekiti Kingdom

7.2.2.1 Background information

Ijero-Ekiti is the second largest town after Ado-Ekiti. It is in the Ekiti South Senatorial district, with the headquarters of the Ijero local government area located in Ijero-Ekiti (Aladeojebi, 2016). Since 1976, it has been the headquarters of the Ijero local government area. Ijero-Ekiti is roughly 50 km from Ado-Ekiti, the capital of Ekiti State. The population of Ijero-Ekiti was 302 500 based on population estimation in 2016 (City Population, 2022). It has the presence of both federal and state in the local government, such as police command, specialist hospitals, filling stations, and institutions (School of Health Technology, Ekiti State Cooperative College, and Government Technical College). Several mineral deposits are found in Ijero-Ekiti: cassiterite and tin ore, foundry sand and columbite. Therefore, Ijero-Ekiti is characterised by different forms of mining activities (Olusesan-Remi, 2017).

7.2.2.2 Economic activities

A large agrarian population producing cash and food crops resides in the Ijero local government area. Cash crops such as cocoa, timber, cashews, kola nuts, and coffee are planted on a large scale for commercial purposes. Food crops such as cocoyam, yam, cassava, bananas, peppers, and tomatoes are grown on a small scale for local consumption (Aladeojebi, 2016). Setting up institutions and planting cash and food crops contribute to economic and administrative activities in Ijero-Ekiti. Most of the occupants of Ijero-Ekiti are subsistence farmers deriving their livelihood through access to agricultural land.

7.2.2.3 Legal framework

Absolute allodial ownership and Ijero-Ekiti customary law are the basis of the customary land tenure system in Ijero-Ekiti and its environs. Access to land for various purposes is provided by the traditional head and heads of the family, ensuring that family members have access to land without any hindrance. Subjects within the community have usufructuary rights for building, farming, fishing, and hunting. Other uses are accommodated as long as they do not negatively affect the primary communal interests. The

patrilineal system is used in inheritance, where the property is bequeathed to the eldest son. Women are excluded from inheritance rights except for rights to agricultural land for farming purposes. Under the customary land tenure system, non-indigenes who have no customary rights can acquire land by purchasing or giving.

Indigenous communities of Ijero-Ekiti had a structured kingdom before colonisation. Chiefs and families were the owners and custodians of land. Land ownership is vested in the traditional head and family members. They were responsible for land allocation and settlement of disputes. The traditional head and the chiefs were the links between the community and the people. During colonisation, chiefs were co-opted into the LAS. Despite the role of the chiefs in the colonial era, land was vested in the state's Governor-General in accordance with imposed laws. However, the traditional rights of land have survived to date with the promotion of traditional institutions in the control and management of customary land (See section 2.2.2).

Customary institutional arrangements in Ijero-Ekiti exist as an organised body. The Owa Ajero is the traditional head (King) who administers authority over land and its resources within his jurisdiction. The second in command to Owa Ajero is High Chief Obanla followed by Esaaba, Eesikin, Odofin (see Figure 7-2). The secretary is Saade, followed by Esikin, Ogbonni, Osuta, and Asa, respectively (LRH1, 2021). The chief of security to Owa Ajero is Chief Egbedi (Aladeojebi, 2016).

7.2.2.4 Land tenure in Ijero-Ekiti

Land in Ijero-Ekiti comprises customary land and statutory land. Customary lands are communal land, family land and stool land while statutory lands are private or individual land and state land. Land use activities in Ijero-Ekiti changed drastically after the discovery of mineral deposits in 1934/1935, introducing high demand for land for several purposes. The land tenure system also changed due to mining activities. Peri-urban Ijero-Ekiti witnessed much ecological and economic threat due to illegal mining by indigenes and foreigners (The Nation, 2015). Nowadays, the authority of the customary institutions over

land seems eroded, as unlawful mining activities continue unchecked (see Figure 7-3). The youth are jobless, and the community is under-developed (*ibid*.). Despite being blessed with natural resources, the community members live in abject poverty (The Nation, 2015). Residential and commercial activities have replaced mainstream subsistence farming with much of the land allocated without an approved layout plan.

Figure 7-3. Illegal Mining Sites in Ijero-Ekiti

7.2.3 Description of Oye-Ekiti

7.2.3.1 Background information

Oye-Ekiti is in Ekiti North Senatorial District of Ekiti state and is roughly 35km from Ado-Ekiti, the capital city of Ekiti State. It is the local government headquarter of the Oye local

government area. The population of Oye-Ekiti is about 187 900 based on the population estimation for 2016 (City Population, 2022).

7.2.3.2 Economic activities

Trade is central in the economy activities in Oye-Ekiti followed by farming. Oye-Ekiti has several markets such as the Menara market. Several other economy activities in Oye-Ekiti include wood carving, food processing, textile weaving, and crafts making (Manpower Nigeria, 2022). Many of the inhabitants of this community are subsistence farmers. The district is rich in forest, timber, and agriculture on arable land. The dense evergreen forest enables the soil to retain nutrients, allowing the people to engage in farming, making it an agricultural town (Aladeojebi, 2016). Their contact with European settlers at the end of the 19th century resulted in growing cash crops: cocoa, kola nut, oil palm and coffee (*ibid.*). The recent location of Crawford University in 2005 and Federal University of Oye in 2011 brought about the high demand for land, changing the livelihood of the community's people and bringing about urbanisation (Akindola and Ojo, 2020).

7.2.3.3 Legal framework

A mix of customary and statutory law governs land with a customary and statutory legal framework used in Oye-Ekiti for land administration. Customary laws of Oye-Ekiti are used in customary land administration, with land access predominant through the customary land tenure system. Land is controlled by the Oloye (king) in council, holding community land in trust for the people and providing access to land based on need. Concerning the current traditional arrangements, the tenure institution of Oye-Ekiti customary areas is administered by the Oloye, the head of the chieftaincy institution's traditional leaders (see Figure 7-2).

The customary institution structure of Oye-Ekiti is based on the hierarchy of the chieftaincy institutions and the community committees. The Oloye is the head of the traditional council in Oye Ekiti. The second in command to Oloye is the Eleegbo followed by Oloja Irona, Oloja Egbe, and Ogbolu (see Figure 7-2).

7.2.3.4 Land tenure in Oye-Ekiti

The land tenure system in Oye Ekiti comprises customary and statutory tenure. For the entire community, land is accessed through the customary land tenure system. There is also family and individual land. The community land is vested in the paramount ruler of the town (Oloye), while the family land vests in the head of the family. Both hold land in trust for their people/families. Community members enjoy usufructuary rights of building, farming, hunting, and fishing. These rights remain with the holder throughout their lifetime and can be transferred through tenancy, inheritance, pledge, and gift under customary law, except in the case of fishing. Land transfer through succession is based on patrilineal inheritance. Non-indigenes access land for farming through customary tenancy agreements for which they pay tribute to the landowner. Different channels are used to access land in Oye-Ekiti, the most common being through the family head.

7.3 MHUD and BLS in Soft System Methodology (SSM)

In analysing LASs with their legal frameworks, SSM is found suitable as a system thinking tool (see sections 3.3.3 and 4.5). The current analysis is based on the case study narratives in Chapter 5 since in SSM, soft system thinking tools are underscored by case study research (Whittal, 2008). SSM is used to analyse the social, cultural, historical, and political situation of MHUD, BLS, traditional authorities, and state courts. The enquiry into the problem situation of MHUD and BLS is guided by the concepts of SSM by Checkland (1999). The problem situation is structured, and a detailed description of the system is developed. The detailed description is aimed to guide and improve the system. As discussed in sections 3.3.3 and 4.5.1, the SSM analytical tools are used for analysis.

7.3.1 MHUD and BLS description using the rich picture

The rich picture is based on the case study narratives in Chapter 5, using multiple perspectives from key stakeholders and staff of the institutions. The unstructured view of the MHUD and BLS was developed using a mind map approach detailing the present situation of the institutional framework for land administration. The problems emanating

from political, economic, and social aspects are identified (see Figure 7-4). The rich picture is developed in two stages: elements and processes, the view of stakeholders and staff of MHUD and BLS. The components of the MHUD and BLS are described using a rich picture. The MHUD consists of the URP, PPA, and URA (see section 5.6.2). The BLS is structured into the land services, land use and allocation, deemed title right, and property management and valuation.

Based on

Figure 5-7, the rich picture of elements and the process of BLS is produced and shown in Figure 7-4. The figure shows the various departments of BLS: land services, land use and allocation, title deemed right, finance and account, plan research and statistics, and administration and supply. The first three departments are crucial to this research and their roles are in the rich picture. The land services undertake acquisition and compensation while land allocation, resettlements and litigation are undertaken by the land use and allocation. The title deemed department does title registration. The rich pictures in Figure 7-5 illustrate the present situation for understanding the problem. The rich picture for understanding the current LASs with their legal frameworks is presented in Figure 7-5 using the narratives discussed in section 5.6. To develop the CATWOE elements the rich picture elements and processes of MHUD and BLS are used in section 7.3.2. The combination of the rich picture elements and CATWOE elements are used in section 7.4 to discuss the problem situation of MHUD and BLS using the systems of legal, organisational, organisational, social and economic, political, and technical. Using the problem situation discuss in section 7.4, the two streams of analysis of MHUD and BLS are produced using the cultural and logic-based streams of analysis in section 7.5.

Figure 7-4: Rich Picture of Elements and Processes of BLS

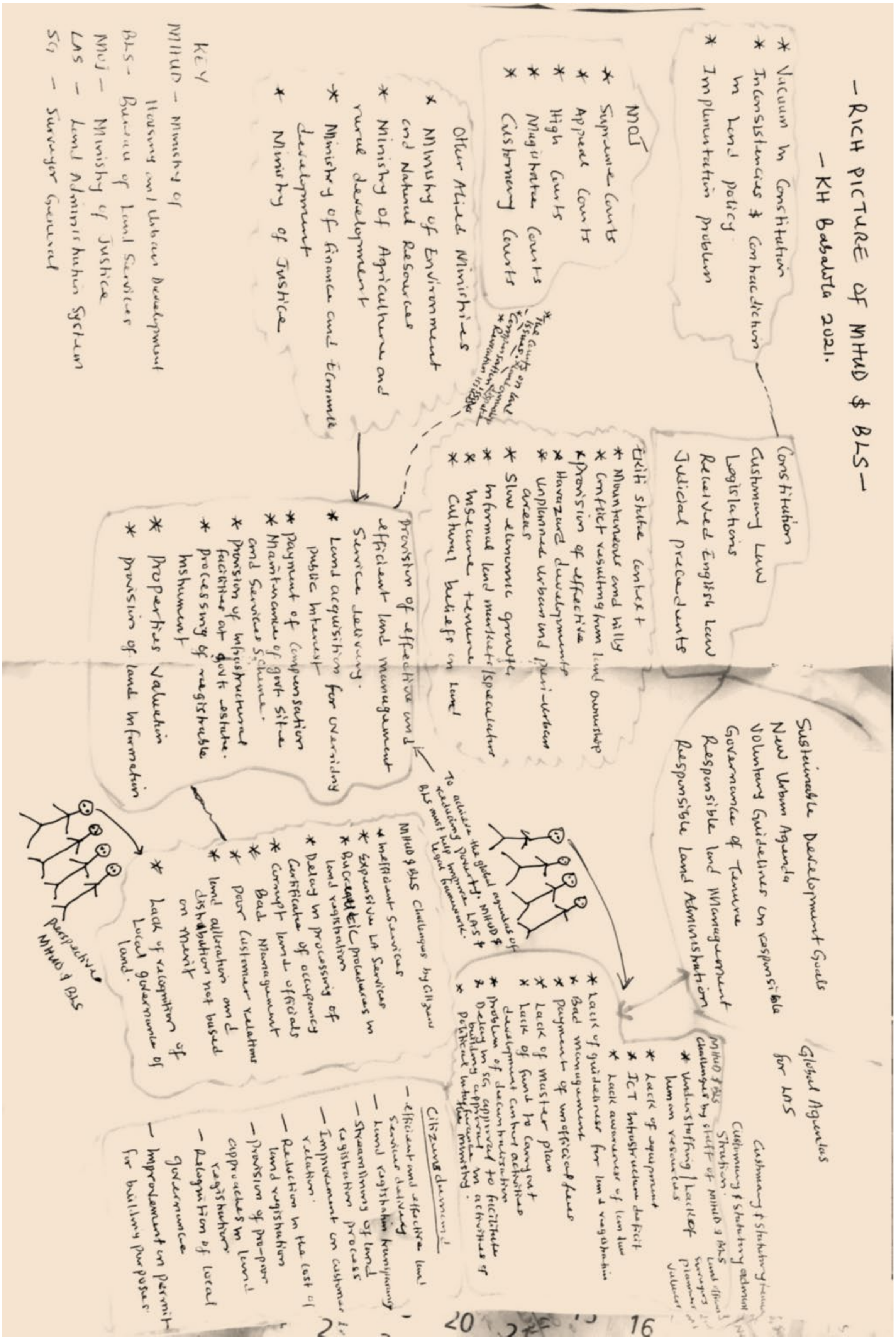

Figure 7-5: Rich Picture of MHUD & BLS

7.3.2 CATWOE elements of the MHUD and BLS

The case study narrative in Chapter 5 and the rich pictures in Figure 7-4 and Figure 7-5, respectively, are used to develop the CATWOE elements. These CATWOE elements help to structure the problem using the human activity system models. For this study, citizens and subjects are the customers of MHUD and BLS. The citizens are customers in the urban areas as recognised by the statutory institutions, while the subjects are customers in the peri-urban areas as recognised by the customary institutions.

Table 7-1. CATWOE Elements of MHUD and BLS

CATWOE ELEMENTS	MHUD & BLS in CATWOE ELEMENTS
C = Customers (Citizens and Subjects)	Political office holders, civil servants, banks, housing corporations, local government councils, other ministries dealing with land, and citizens and subjects of the state.
A = Actors	State (governor, state assembly and local govt. assembly, civil servants working in MHUD & BLS, Commissioners, Special Adviser, executive secretaries, land officers, planners, surveyors, legal officers, accountants, Service Compact with All Nigerians (SERVICOM) staff).
T = Transformation	The process of splitting MLHPPUD to MHUD and BLS is to help achieve the transformation agenda of the governor. Building plan approval and registration of title are processed and property taxes are collected in a manner that promotes good governance. Conversion of absolute ownership into rights of occupancy. BLS is responsible for the provision of land information, processing of certificate of occupancy, consent provisions, land transfers, subdivisions, and property tax collection
W = World View	Effective functioning of MHUD and BLS as LAS aimed at improving economic growth is part of the broader Governor 7-point agenda of transformation concerning providing efficient and effective land services. Efficient and effective services that ensure fairness, transparency, equity, and legality. These processes are part of achieving the global agenda of SDGs, NUA, VGGT, reducing poverty and securing tenure.
O = Owners	The residents of Ekiti State, users of LAS, policymakers, clients' key informants, victims of the ineffectiveness of LAS. Land speculators are growing among clients, creating an informal land market.
E = Environment	Institutional and organisational structures, socio-political processes, land policy and land laws, the Constitution. The environment pertains to those existing constraints affecting the operations of MHUD and BLS directly and indirectly. These are unstable administrations due to a change of power, lack of government support for the system by understaffing the system.

7.4 Problem Situation of MHUD and BLS

7.4.1 Legal system

The legal system comprises the customary and statutory parts. The sources of law are the Constitution, customary law, legislation, the received English law, and judicial precedents (see section 5.2). The hierarchy of courts, as discussed in Figure 5-1 and Table 5-1, shows customary courts at the lowest rung of the hierarchy. However, the status of customary law in the Constitution is undefined, which makes statute law dominant over customary law in land administration. Customary legal systems are not identified as legitimate as the statutory legal system for land administration because traditional leaders are not recognised in the Constitution. The identity of the customary court is questioned in Nigeria (Diala, 2019).

Autonomy is an issue that is central to legal pluralism in land administration (see definition of legal pluralism section 1.2.1). The inherent customary legal system has the power of self-determination regarding land tenure, land use and land development.

For a legal system to be significant and sustainable, the legal systems for land administration must be sensitive to context. If the LAS is significant and sustainable, success can be achieved (Hull and Whittal, 2019). The MHUD and BLS function through the Constitution, land policy, town and country planning act, and Ekiti State building regulation law. They function without recourse to customary law (section 5.6.2). Without recognising customary law in land administration, the MHUD and BLS may lack legitimacy for the peri-urban populace (see section 3.5.3 for legitimacy).

7.4.2 Organisational system

The organisational system for LAS is discussed in section 5.6.2. Knowing the organisation's structure is vital in determining the significance of these institutions to rural and peri-urban land affairs. It has been observed that decentralisation is not embedded in the design of the organisational system as there is a lack of autonomy and self-determination by the peri-

urban populace (sections 5.6.2 and 5.6.3). All applications revert to the MHUD and BLS for processing. The centralisation of LAS affects land access, speedy building approval and issuing of a certificate of occupancy (section 5.6.3). This form of an organisational system does not benefit the peri-urban populace because institutions dealing with land allocation, registration, and regulation of land disputes are centralised. Accessibility to rural (mostly poor) people is thus negatively affected.

7.4.3 Social and economic systems

Theories of LAS emphasise the importance of social and economic systems to the overall performance of LAS. For instance, Williamson *et al*. (2010) state the success of LAS depends on the socio-economic environments in which they function. Hull and Whittal (2019) also say that success can only be achieved when LAS are significant for land rights holders. Significance implies that land rights holders' tenure, administration, and law are context-specific. As observed in the narrative discourse in Chapter 5, land tenure and administration follow customary and statutory norms, with the statutory norms dominating (see section 5.6). The statutory tenure and administration are geared towards economic theories that adopt the individualisation of land rights over collective ownership. The environment in which the social systems operate in Ekiti State is lacking and ineffective (see Figure 7-4 and Figure 7-5). Traditional institutions are excluded from the design of land administration, despite most land allocated and used by the State government being derived from the customary land tenure system. In the rich picture (Figure 7-5), decentralisation of land services is lacking. All the institutions involved in the land administration services are all statutory institutions with no customary institutions (As shown in the key to the rich picture). To help ensure the security of tenure of the peri-urban populace (and thus also reduce poverty and provide economic growth), the design of LAS must be inclusive and context-specific (Hull, Babalola and Whittal, 2019).

7.4.4 Political system

For LAS and the legal system to be effective and efficient, political support is necessary to facilitate the implementation of land laws. The political system should be well structured to achieve optimal efficiency and effectiveness to remove bureaucracy in institutions of MHUD and BLS. In the MHUD and BLS political system, the governor, commissioners, and executive secretaries are important because they are responsible for governance and day-to-day activities. The Ekiti State government is saddled with the responsibilities of building effective and efficient LAS and managing state land (sections 5.6.3.1).

The MHUD is responsible for issuing approval and permits for building purposes. BLS is responsible for land services such as the issuance of the consent provisions, certificate of occupancy, land information, and dissemination of government programmes on land matters. Lack of political support and will is identified as there are inadequate human resources to execute the objectives of MHUD and BLS and no master plan which allows the use of discretion in the issuance of approval for building purposes, among other things (see sections 5.6.3.1 and 5.6.3.5 and Figure 7-4 and Figure 7-5).

7.4.5 Technical system

The MHUD and BLS should be understood through the conceptual technical system to be efficient and effective. The application of modern technology in MHUD and BLS is still lacking, and most of their operations are conducted manually. The manual operations cause a delay in building approval, Surveyor-General approval, and the issuance of a certificate of occupancy. Automating and digitising the processes of MHUD and BLS may increase efficiency and effectiveness, improving the turnaround time of delivery of land services to the people (see also Showaiter, 2018). Using ICT in day-to-day operations may increase transparency and enhance client and staff communication (Hull and Whittal, 2013).

7.5 The Two Streams of Analysis of MHUD and BLS

The two streams model of SSM discussed in section 4.5.2 combines the cultural and logic-based analysis of the problem situation. The two streams of analysis help to understand

who is responsible for action to help improve the MHUD and BLS. An analysis of MHUD and BLS was carried out from a systems thinking perspective based on an in-depth knowledge of the case, enabling the development of the two streams model (see Figure **3**-**2**). The case study narrative in Chapter 5 is used to derive information presented in Figure 7-6. The elements in the two streams of the SSM framework are represented in different colours, as explained below.

7.5.1 Cultural streams of analysis

Three types of analysis are used to perform the cultural stream of analysis: analysis of intervention, social systems analysis, and political system analysis (Checkland, 1999). The stream of cultural analysis spans from the intervention to the end (Checkland and Scholes, 1990). However, the intervention falls outside the scope of this study because the study aimed at examining how the existing legal framework supports land administration; this does not include interventions. Nevertheless, the findings of this study could help provide such interventions to improve the system. The social and political systems of analysis help to provide a visible cultural analysis (see Figure 7-6). The real-world situation is shown in blue, while orange's cultural analysis separates the social and political aspects. The social elements link to the political aspects and the systems model of MHUD and BLS. The cultural stream of analysis depicts customary law as suppressed in LAS; as a result, the MHUD and BLS in a real-world situation are shown in the orange rectangular box. The real-world problem of the MHUD and BLS is further demonstrated in the cultural analysis of social and political aspects. These all culminate in legal, organisation, social, economic, political, and technical systems. The different systems result in logic-based streams of analysis.

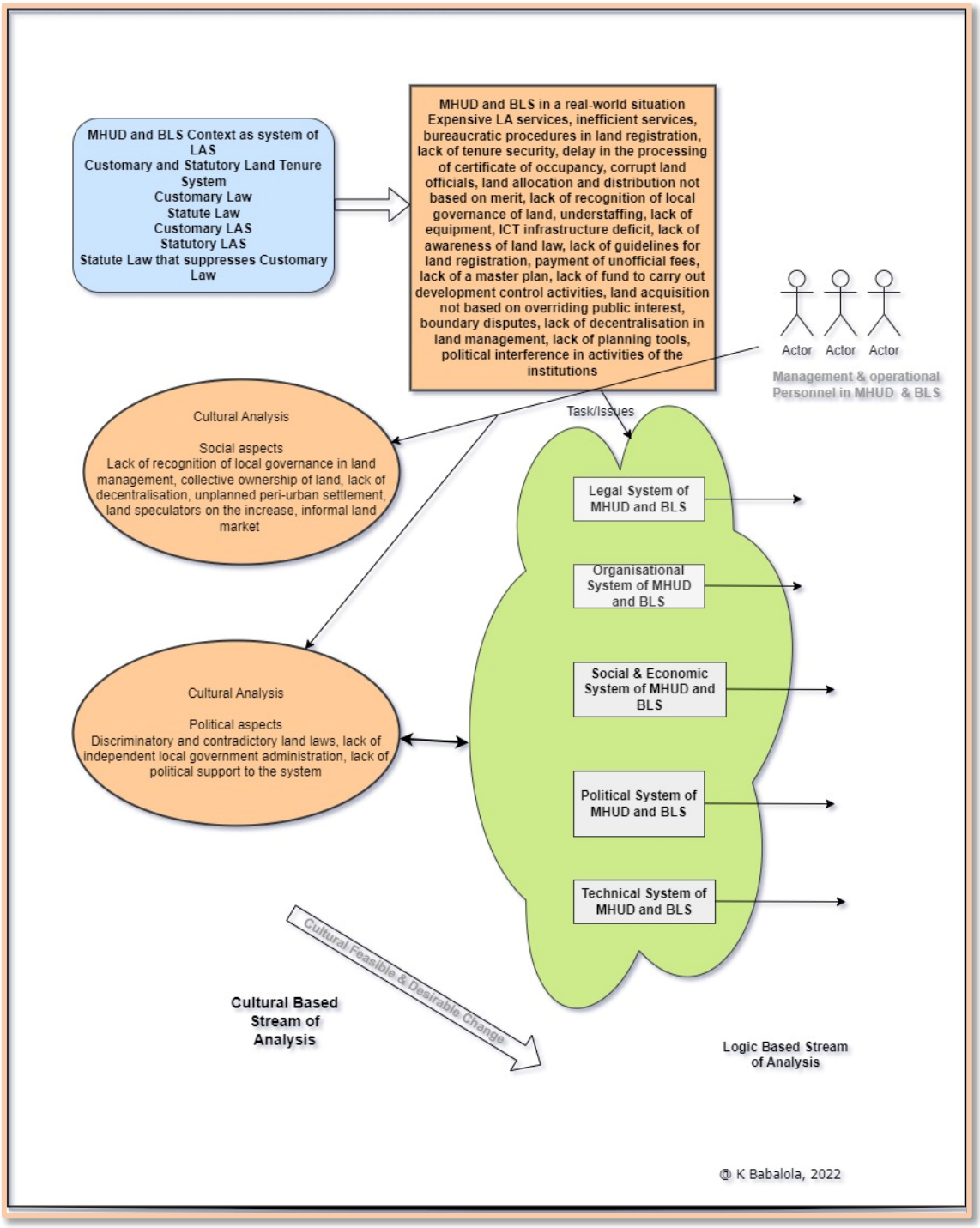

Figure 7-6: Cultural Stream of Analysis of the Two Streams Model of MHUD and BLS

This cultural analysis consists of the four main activities as described below (Checkland, 1999):

- Finding the problem situation, which entails the cultural and political aspects,
- Modelling relevant purposeful activities as informed by the problem situation,

- Stating the desirable and feasible change based on the relevant activities modelled,
- Finding accommodations between conflicting interests to take action to improve the situation.

The use of the cultural-based analysis helps to dissect the social and political aspects of the system providing benefits for social systems analysis of the MHUD and BLS (see Figure 7-6). The cultural analysis of the MHUD and BLS revealed that the design of the two institutions is lacking in structure and process. The lack of significance of MHUD and BLS to peri-urban dwellers can be observed as many local conditions are not incorporated into the design. The non-incorporation of local design may affect the legitimacy of MHUD and BLS to peri-urban dwellers (see section 3.5.3). The real-world situation of MHUD and BLS showed a deficiency of legal pluralism. Central to this is the non-recognition of customary law in the Constitution and the non-recognition of local governance of land management (see sections 5.5.2 and 5.5.3).

The strength of the cultural stream of analysis rests on the narrative presented in Chapter 5 regarding the legal frameworks and LASs. Nevertheless, the presentation in the form of the historical, real-world problem, and cultural aspects contributes to an in-depth understanding that ensures all aspects are covered (see Figure 7-6). RLM and FFPLA are used to analyse the same case to ensure triangulation and good research design, which helps to have reliable generalisability of results.

7.5.2 Logic-based streams of analysis

> *" [The] logic-driven stream and the cultural stream interact, each informing the other. Which selected relevant human activity systems are found to be relevant to people in the problem situation will tell us something about the culture we are immersed in."* (Checkland and Scholes, 1990: 30)

The conceptual system identifies the sub-systems relevant to the study, representing them in light blue in Figure 7-7. These sub-systems provide impetus to the remainder of the chapters when applying the RLM and FFPLA. The goals of change, the status, and systems

models of reaching the changing state are presented by the logic-based stream of analysis, primarily "gap analysis" from a systems perspective. The strength of the logic-based stream of SSM analysis lies in understanding the change goals and the view of the current state. The logic-based stream of analysis of the MHUD and BLS is shown in Figure 7-8, with all processes of change considered to reflect multiple perspectives. The best practices in LAS, RLM, and FFPLA inform the logic-based streams of analysis. The following section uses RLM and the 8R indicators discussed in Chapter 4 (see section 4.4.2).

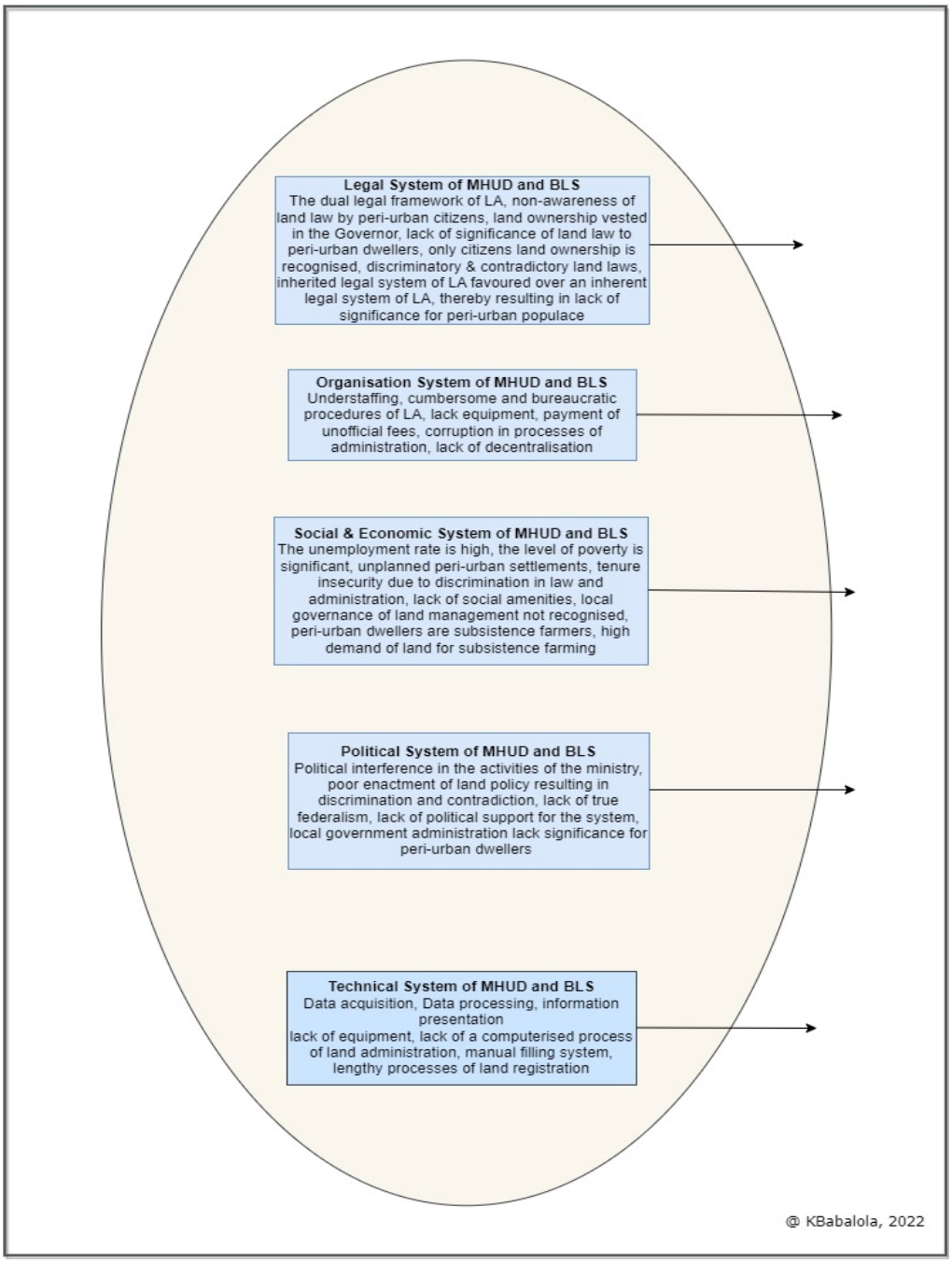

Figure 7-7: The Conceptual Systems of MHUD and BLS

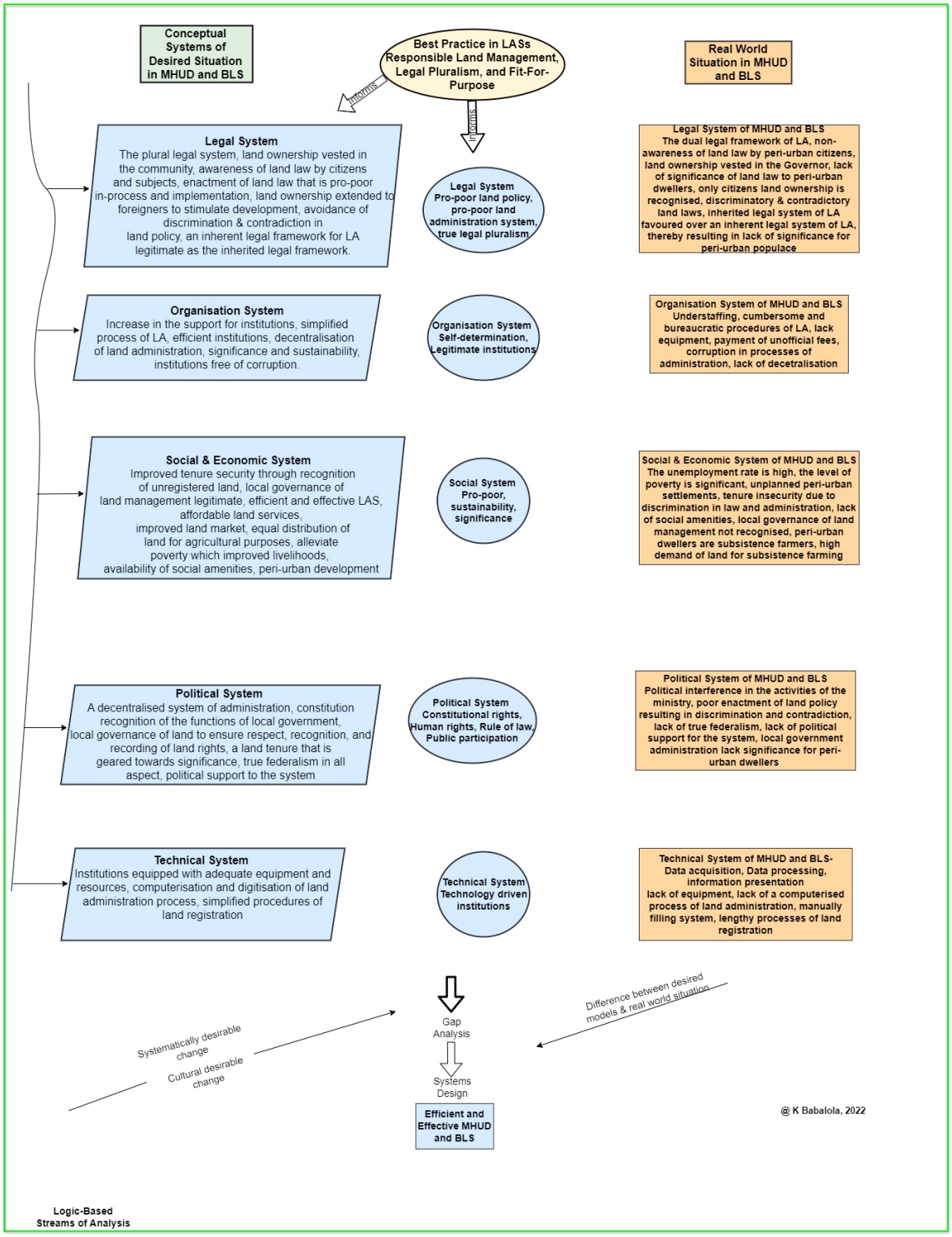

Figure 7-8: The Two Streams Model based on MHUD and BLS Logic-Based Stream of Analysis

7.6 Case Study Narratives Using RLM in Peri-Urban Ekiti State

Section 2.4 discusses the concept of RLM; it is described as one of the research methods used for data collection in section 4.4.2. Using the interviews (customary and statutory

institutions) and survey questionnaire (land rights holders) in appendix 1, appendix 2, and appendix 3, the RLM is used to develop the case study narratives. The case study narratives help to ascertain if the splitting of MLHPPUD to OSG, MHUD and BLS addresses the needs of the peri-urban populace. As analysed and integrated with secondary data in Chapter 5 and the case study narratives in sections 7.3, 7.4, and 7.5, the interviews are used in conjunction with the survey questionnaire results. The reader is reminded that the 8R indicators of RLM are explained in section 4.4.2.

7.6.1 Resilient

Interventions in LAS should be able to accommodate existing structures to withstand unpredicted circumstances that will ensure success (Ameyaw *et al*. 2018). Concerning resilience, the study ascertains whether the formal land administration accommodates customary law flexibility. In addition, it examines inconsistencies and contradictions in the LUA and the structure of the committee in charge of land matters in the LGA. It further examined if there is a community dispute resolution committee in the three peri-urban areas. Finally, measures taken to appoint traditional land governance (TLG) are examined (see section 4.4.2).

The interventions in LAS in Nigeria concerning the Ekiti State structure were examined. The major intervention was the enactment of the LUA of 1978 to provide efficient and equitable LAS. The promulgation of the LUA failed to accommodate the flexibility of customary laws in land administration (TA1, TA2, TA3, TA4, TA5, 2021). “Local authorities give orders initiated by the government; no customary laws govern these orders given” (TA1, 2021). The responses of traditional leaders are corroborated by the interview of statutory authorities, which state that customary law is not valid while statutory laws are valid in land administration (SA1, SA2, 2021). The interviewees confirm that the inconsistencies and contradictions in the LUA make it ineffective for solving peri-urban land problems (SA2, 2021), with specific reference to the compositions of the committee in charge of land

administration in rural and urban areas (see section 5.6.1.3). In addition, consideration is also given to the issue of land alienation, where these inconsistencies and contradictions exist (*ibid.*). The omission of the traditional leaders from the customary legal framework was not considered to affect its legitimacy and legality (TA1, TA2, TA3, TA4, TA5, 2021). The appointment of TLG is made by assembling all family members under the head of the family. They set rules according to customs to govern land use and development (*ibid*.).

Table 7-2 indicates the views of land rights holders, both indigenes and non-indigenes, on accommodation of the flexibility of customary laws in land administration and the availability of a community dispute resolution committee. The peri-urban dwellers in Ikere-Ekiti and Oye-Ekiti stated that the flexibility of customary law is not accommodated within the LAS. Negative responses totalled 67,5% and 83,8%, respectively, in the two areas, while 69,1% of peri-urban dwellers in Ijero-Ekiti responded positively. The above reactions indicate a diverse view of the peri-urban dwellers' perception of how customary laws are accommodated by the statutory legal framework for land administration. These data collaborate with Babalola and Hull's (2019: 20-21) findings that two schools of thought emerged on determining the LUA's recognition or abolishment of the customary land tenure system. Of the people surveyed about the presence of a community dispute resolution committee, the responses were positive with 95,6%, 66,6%, and 93,9%. However, there is a 33,3% negative response in Ijero-Ekiti, which shows that one out of three respondents in Ijero-Ekiti are unaware of the community dispute resolution committee.

Table 7-2: Resilient

	Ikere-Ekiti		Ijero-Ekiti		Oye-Ekiti	
Response	Yes	No	Yes	No	Yes	No
Accommodation of customary law flexibility	32,5%	67,5%	69,1%	30,9%	16,2%	83,8%
Community dispute resolution committee	95,6%	4,4%	66,6%	33,3%	93,9 %	6,1%

7.6.2 Robust

Robustness relates to endurance, or the ability of a system to withstand failure (Ameyaw *et al*. 2018). The following pertinent issues are addressed (see section 4.4.2): the extent to which innovative ways of recording land rights are recognised by SLF; the extent to which statutory institutions are collaborating with traditional institutions; interaction between the people and the traditional institutions; interactions between the people and the state; and whether there are land administration tools developed to aid land management in both customary and statutory processes. Sections 5.6.2 and 5.6.3 discussed the organisational and institutional framework for administering land. The institutional framework is entirely based on formal land administration. As in all statutory processes in Ekiti State, innovative ways are not recognised in recording land rights (SA1, SA2, SA3, SA4, 2021). Land documentation is still an entirely paper-based system (*ibid*).

Land administration experts were asked whether they are trained to use new technology in land administration, and the answer was negative (*ibid*.). The involvement of indigenes, non-indigenes and both the customary and statutory institutions in the land administration was interrogated. Collaboration between these institutions is both formal and informal. Formal collaborations exist between statutory institutions, such as the collaboration between OSG and BLS (see section 5.6.2). This form of collaboration is mandated by law (SA1, SA2, 2021). Informal collaborations are between customary and statutory institutions

because they are not required by law (SA2, 2021). Table 7-3 shows the responses to the question: is there any collaboration between statutory and customary institutions, interactions between the people and the government, and interactions between the people and traditional institutions? It is clear from Table 7-3 that there are no collaborations in land administration between customary and statutory institutions, people, and the state institutions in the three peri-urban communities; however, there are collaborations between people and traditional institutions. The above reaction contrast with the answer provided by the land administration expert who was asked whether they collaborate with traditional institutions in land administration (see section 5.6.3.1). The response was in the affirmative, stating that "we hold meetings as a request for land acquisition" (SA2, 2021). Notices of land acquisition are served through them" (*ibid*.). It is only when land is to be acquired that the collaboration exists (see section 5.6.3.1 for the land acquisition process).

The separation of MLHPPUD into OSG, MHUD, and BLS as individual systems working together is further examined. This intervention was aimed at aiding the transformation agenda of the Governor of Ekiti State (see section 5.6.2.3). The challenges of these institutions are discussed, which are the inefficiency and ineffectiveness of their services (see sections 5.6.3.1 and 5.6.3.5). This inefficiency and ineffectiveness may impact the delivery of land administration services to the peri-urban areas.

Table 7-3: Robust

	Ikere-Ekiti		**Ijero-Ekiti**		**Oye-Ekiti**	
Responses	Y	N	Y	N	Y	N
Collaboration between statutory and customary institutions	10,6%	89,4%	14,3%	83,3%	22,2%	77,8%
Interactions between the people and customary institutions	91,9%	8,1%	78,6%	21,4%	89,9%	10,1%
Interactions between the people and the government	23,7%	76,3%	16,7%	83,3%	5,1%	94,9%

7.6.3 Reliable

Reliability means that people trust the system not to break down and to provide affordable and efficient services (Ameyaw *et al*. 2018). The field study examined how reliable land management processes are by accessing how state and non-state actors are accountable to the public as regards land management, i.e. the extent to which land is readily available to peri-urban dwellers; the efficiency of the statutory land registration process; the degree to which the land use planning is functioning; and the extent to which tenure security is ensured in the community (see section 4.4.2).

The separation of MLHPPUD into OSG, MHUD, and BLS placed responsibilities on state actors. Most state actors claimed that non-state justice systems (NSJS) are not as legitimate as the state justice system in respect of land administration (SA1, SA2, SA3, SA4, SA5, SA6, SA7, SA8, SA9, 2021). The illegitimacy of NSJS is established because there are instances where the state justice system ruled against the NSJS (SA1, SA2, 2021). When asked whether guidelines are available to hold public officials and agencies accountable to the public, several responses were recorded: through SERVICOM, the Executive Secretary of BLS, and the director of the department that is involved (SA1, SA2, SA3, 2021). For customary land administration, erring chiefs are reported to the palace administration (TA1, TA2, TA3, 2021). Reported cases are handled in line with the customs and norms of the respective community in which the case is reported (*ibid.*).

One of the central objectives of the LUA is to make land readily available to the people (Babalola and Hull, 2019a). In peri-urban areas, there is high land demand, with most farmland being converted into residential uses (LRH1, LRH2, LRH3, 2021). The conversion of farmland to residential use decreases land availability as land costs continue to inflate following the law of demand and supply. The rating of the land registration system by customary leaders shows a lack of trust in the system to deliver efficient and effective services (TA1, TA2, TA3, TA5, TA6, TA9, 2021). Six of nine customary leaders rated the land

registration system below 3 on a scale of 1 to 6, where 1 is poor, and 6 is excellent (*ibid*.). The MHUD stated that there is no master plan regarding land use planning. Hence "discretion is used for granting building approvals" (SA1, 2021). The above response corroborates the view of the nine customary leaders who rated the land use planning very poor (TA1, TA2, TA3, TA4, TA5, TA6, TA7, TA8, TA9, 2021). Ensuring tenure security is an essential part of the LAS process has been proven to improve the livelihood of the peri-urban dwellers, hence the need to investigate tenure security in the study area. Table 7-4 shows the responses from land rights holders using a scale of 1 to 6. A rating below 3 is considered poor, a rating above 3 is considered good, and a rating at 3 is average. Seventy-seven per cent of respondents rated the land registration below 3, while 23% rated it above 3 in Ikere-Ekiti. In Ijero-Ekiti and Oye-Ekiti, 83% and 71%, rated the land registration as poor respectively. In all the areas studied, there are divergent views on whether their land administration needs are addressed regarding tenure security. It appears that land tenure is insecure in the study areas as 66%, 52%, and 58% of land rightsholders in the three peri-urban areas affirm that they do not have tenure security, while 34%, 48%, and 42% assert that their tenure is secured.

Table 7-4. Reliable

	Ikere-Ekiti		**Ijero-Ekiti**		**Oye-Ekiti**	
Responses	(1-2) 3	(4-6)	(1-2) 3	(4-6)	(1-2) 3	(4-6)
How can you rate statutory land registration processes?	77%	23%	83%	17%	71%	29%
Responses	Yes	No	Yes	No	Yes	No
Is the land use planning functioning well in the community?	11%	89%	12%	88%	21%	79%
Are land administration needs addressed?	34%	66%	48%	52%	42%	58%

7.6.4 Respected

Respected means that the system is free from corruption and biases that may affect the populace (Ameyaw *et al*. 2018). An important aspect of this section is the study on the issues of compensation payment by statutory institutions; equality of men and women as regards land rights; eviction of land rights holders, and the protection given to women's land rights by customary and statutory institutions. The section further examines the avenues provided when inadequate compensation is paid. Finally, the study investigates if there is any form of corruption in land delivery in peri-urban areas (see section 4.4.2).

In section 5.6.2, the land acquisition and compensation processes are discussed. The issue of compensation is examined to investigate how this affects the land rights holders. Section 28 of the LUA empowers the governor of each state to pay compensation for "unexhausted improvement" on land acquired in terms of the overriding public interest. Compensation payments constitute a significant challenge as the government only pays for improvements but not for the land itself (SA2, 2021). There are several land acquisitions in the three peri-urban areas studied. Most of the acquired land is developed, while some remains undeveloped (SA1, SA2, 2021). The undeveloped land deprives the peri-urban dwellers of the opportunity of livelihood since these lands are used for farming. When compensation payment is inadequate, the land rights holder has the constitutional right to approach the High Court to seek redress. The process is tedious and cumbersome as it takes several years to determine such cases (LRH1, LRH2, LRH3, 2021).

Table 7-5 summarises how women and men are treated when accessing land and the extent to which community members are evicted from their land. It cannot be stated that women and men are treated the same way when accessing land because 3 out 10, 5 out 10, and 3 out 10 in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti respectively said women and men are not treated the same way. There still exist some gender differences in accessing land but some form of respect for women is observed. A significant number of respondents expressed

respect for land rights. For instance, across the communities studied, evicted people stated that their land issues were resolved by family heads and traditional leaders (*ibid*.). The centralisation of LAS, which brings all land administration powers to the state capital, may breed corruption and abuse of power. When asked whether there is corruption in the LAS process, the response was that it is possible, but measures are taken to dispel any forms of corruption in the process (SA1, SA2, SA3, SA4, 2021). The measures provided are:

- payment directly into the government account through what is called REMITA;
- the land administration process involves different department categories, which means it is not a one-step process; - see also Ghebru and Okumo (2017) confirming some form of corruption in the land administration process.

Table 7-5. Respected

	Ikere-Ekiti		**Ijero-Ekiti**		**Oye-Ekiti**	
Responses	Yes	No	Yes	No	Yes	No
In accessing land are women and men treated the same?	72%	28%	52%	48%	77%	23%
Have you ever been evicted from your land in this community?	9%	91%	21%	79%	71%	29%

7.6.5 Reflexive

Reflexive implies the facilitation of participation by local people in land management. As regards reflexiveness, the study looks at why customary law still exists and also the challenges of integration of customary and statutory laws; the role of community members in the land administration process; how customs and norms are used to resolve a dispute on land; and the measures taken to make customary laws on land delivery available and clear to members of the community (see section 4.4.2).

According to respondents, customary laws exist because people still live in undeveloped areas where the government cannot govern effectively (TA3, 2021). A further response reflects that it is essential to check the issues that may emerge from land sales, e.g., the sales of one land parcel to two or more people (TA3, TA4, 2021). When asked about the challenges of integration of customary and statutory law, it is stated that statutory laws are rigid. In contrast, customary laws are flexible and challenging to integrate unless one is favoured over the other (TA3, 2021). A distinct feature of how customs and norms are applied in land dispute resolution is the usual visit to the site after every party has stated their case. Regarding the availability of customary law in land delivery to the community members, there are no codified laws; however, there are recognised norms and practices. The understanding of the law is according to what is carefully explained to the people (TA1, TA2, TA3, TA4, TA5, TA6, TA7, TA8, TA9, 2021).

7.6.6 Retraceable

This section looks at whether the intervention structures provided in land management are clearly defined, the decision-makers in LAS, and clarity in the procedures of LAS. The first intervention in LAS is the enactment of the LUA (see section 5.6.1.3). The subsequent interventions in LAS in Ekiti are the creation of OSG, MHUD, and BLS from MLHPPUD (see section 5.6.2). These interventions were undertaken to ease the process of land registration. The decision-makers in these institutions are the principal officers. For instance, in OSG, the Surveyor-General oversees all activities of the institution (see section 5.6.2.1). For MHUD, this is the Commissioner of MHUD, while in BLS, it is the Executive Secretary (see sections 5.6.2.2 and 5.6.2.3). The Commissioner and Executive Secretary report directly to the governor of the state. Land registration procedures are not available in the public domain, resulting in a lack of clarity in the process of land registration. The LUA, the instrument for land registration, is unknown to peri-urban dwellers (SA1, SA2, SA3, 2021).

7.6.7 Recognisable

As per Table 4-2, recognisable implies that all stakeholders are represented, and their land management interests are considered. The representation should be satisfactory to all stakeholders to recognise the intervention. The following were investigated (see section 4.4.2): community members' engagement in the land administration process; the representation of men and women in the TLG; the legitimacy of the customary legal framework; the plurality of legal systems; and institutional capacity to administer land using customary law. Both indigene and non-indigene respondents were asked if they are engaged in land administration (see Table 7-6). The assessment of engagement in land administration yielded mixed results. While 68% of the respondents in Oye-Ekiti said they are not involved in land administration, the results were split roughly equally in Ikere-Ekiti and Ijero-Ekiti. The latter two communities have somewhat adopted a participatory approach to land administration. The findings in Oye-Ekiti are that the participatory process is not used in land administration - this corroborates the interview of one of the traditional leaders in the same community (TA4, 2021). For TLG, the family and the community partake in land management. Under the family head, the family appoints members, including women and men. Each committee sets up a land committee that includes women and men (although men dominated) (TA1, TA2, TA3, TA4, TA7, 2021).

In ascertaining if customary court addresses land matters the same way traditional courts do, the people of Oye-Ekiti had a 45% affirmative response. The people of Ikere-Ekiti and Ijero-Ekiti had a 75% and 71% negative response showing that the customary court is not addressing land matters the way traditional courts do. In Oye-Ekiti, 55% of respondents also reflected that the customary court does not address land matters in the same manner as traditional courts do. Landholders in the areas studied have various reasons to believe that customary courts are not handling land matters equally. Both indigene and non-indigene respondents were asked whether they had taken their land matters to the customary courts. Most respondents across the three communities said "no", which

indicates their belief that customary courts do not address land matters the way traditional courts do (see section 1.2.8 for the definition of traditional court).

Across the three communities studied, indigene and non-indigene respondents believe that the omission of traditional leaders from the customary court does not affect the legitimacy of the customary legal framework. Section 3.5.3 discusses legitimacy and its different forms. This study adopted cultural-cognitive and regulative forms of legitimacy. From the preceding paragraphs, it is observed that the peri-urban dwellers do not take their land matters to customary court because some form of legitimacy is lacking. The legitimacy displayed by the customary court may be more of a regulative framework over cultural-cognitive frameworks (see section 3.5.3 and Chapter 7).

Table 7-6. Recognisable

	Ikere-Ekiti		Ijero-Ekiti		Oye-Ekiti	
Responses	Yes	No	Yes	No	Yes	No
Are you engaged in the land administration process in this community?	54%	46%	45%	56%	32%	68%
Is the customary court addressing land matters the way traditional courts do?	25%	75%	29%	71%	45%	55%
Do you think the exception of traditional authorities from customary court affects the legitimacy of the customary legal framework?	34%	66%	33%	67%	39%	61%
Do traditional authorities have the institutional capacity to administer land using customary law?	78%	22%	81%	19%	78%	22%

Despite the non-recognition of traditional leaders in the CFRN, Table 7-6 showed that traditional leaders have the institutional capacity to administer land using customary law across the three communities. When the traditional leaders were asked what their role in land management in customary areas is, they responded that the land belongs to the people and is managed by both the family unit and traditional leaders (TA1, TA2, TA3, TA4, 2021).

7.6.8 Responsive

This study addresses responsiveness in terms of how well stakeholders in land administration interact, the level of collaboration of TLG with statutory institutions, the extent to which customary processes are allowed in land administration, formal LAS accommodating customary flexibility, and how the needs of the community are addressed.

Three principal institutions responsible for land administration are OSG, MHUD, and BLS, as described in sections 5.6.2 and 5.6.3. These institutions interact to deliver land administration services with little or no interaction with traditional institutions. An exception is at the time of land acquisition (TA1, TA3, TA4, SA1, SA2, 2021). The departmental operations of each institution are shown in Figure 5-7 and Figure 5-8, without any link to the traditional institutions. The land acquisition process is fully explained in Chapter 5, where it is stated that notice of acquisition is sent through the customary leader (Oba) to the family concerned, after which a meeting is initiated between the parties. Before the meeting, the preliminary perimeter survey shows that the land is already acquired before meeting the owners. When asked whether any land administration processes are undertaken collaboratively, the customary leaders responded that all state agents are involved but cannot do without customary leaders (TA3, TA5, 2021). In addition, there is no formal collaboration between the customary and statutory institutions, “What is known is that land belongs to the governor in urban areas and land belongs to the Chairman of the local government area” (TA3, 2021).

Another issue of concern to responsiveness is the feedback mechanism put in place. SERVICOM is an institution set up by the government to entertain complaints of inefficient

and ineffective service delivery. Every government agency has a department handled by a SERVICOM staff that takes complaints of every disgruntled client.

7.6.9 Summary

In summary, this section used the 8R indicators to examine the land management system in three peri-urban areas of Ekiti State. The findings revealed that the intervention in LAS failed to accommodate customary law flexibility as per resilience. Inconsistencies and contradictions inherent in the LUA lead to land-related problems in peri-urban areas remaining unsolved. With robustness, the statutory legal framework fails to recognise innovative ways of recording land rights. The collaborations between customary and statutory institutions in land administration are formal and informal with evident collaboration between the people and the traditional institution (see Table 7-7).

Regarding reliability, the information shows NSJS is not as legitimate as the state justice system. The state actors are held accountable when any unprofessional conduct is reported. The ability of land management to improve access to land under the current statutory legal framework is hindered due to a lack of trust in the land registration system. It is observed that land use planning is dysfunctional. Respect is an indicator for RLM. The information gathered shows that land acquisition and compensation are issues that affect land rights holders. Their rights are not respected (see Table 7-7). As per reflexiveness, customary and statutory laws cannot be integrated. Instead, one is cancelled out by the other. Retraceability is deficient as land registration procedures are not readily available, causing a disconnect between the people and the state institutions. In recognising the role of community members in land administration, some communities adopt a participatory approach while some do not. The family and the community partake in TLG. It was observed that customary courts are not addressing land matters as traditional courts. As per responsiveness, there is a lack of collaboration between the customary and statutory institutions in the land administration process. Feedback mechanisms are put in place for

reporting any form of unprofessionalism by the staff of land administration institutions (see Table 7-7).

Table 7-7. Areas of Strength and Weakness of RLM indicators in Land Management in Peri-Urban Ekiti State

RLM Indicators	Peri-Urban Areas of Ekiti State
Resilient	✗ Customary law not accommodated despite the intervention in LAS ✗ Land related problem in peri-urban areas remain unresolved
Robust	✗ Innovative ways of recording land rights not recognised. ✗ Collaborations between customary and statutory institutions are informal
Reliable	✗ The NSJS is not legitimate as state justice system ✓ State actors are held accountable when there is professional misconduct ✗ There is lack of trust in the land registration process ✗ Land use planning is dysfunctional
Respected	✗ Per-urban dwellers are affected by land acquisition and compensation issues
Reflexive	✗ Customary and statutory law cannot be integrated as statutory laws are rigid
Retraceable	✗ Land registration procedures are not readily available
Recognisable	✗ Participatory approach to land administration is still deficient in some instances ✓ The community and family members participate in TLG ✗ Customary courts are not addressing land the way traditional courts do
Responsive	✗ Lack of collaboration between customary and statutory institutions ✓ There is feedback mechanism in place when unprofessionalism is displayed by a land administration institutions' staff

Legend	✔ Positive ✘ Negative

7.7 Conclusion

This chapter provides the case study narratives using the SSM and RLM, highlighting the problems concerning LASs with their legal frameworks for land administration. The SSM was used to determine the problem using the two streams analysis. This chapter uses RLM to determine if land management in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti meet RLM objectives of being resilient, robust, reliable, respected, reflexive, retraceable, recognisable, and responsive.

It is shown that the design of the MHUD and BLS is lacking using the two streams of analysis, which results in a lack of significance of MHUD and BLS for peri-urban dwellers. In the design of MHUD and BLS, local land management conditions are not incorporated, which may further affect the legitimacy of MHUD and BLS. The institutions showed a deficiency of legal pluralism as there is non-recognition of the customary land law of local governance of land management. Logic-based streams of analysis depict the conceptual models of the desired situation of MHUD and BLS, the best practices, and the real-world situation. Evaluating these produced the gap analysis and system of change to an efficient and effective MHUD and BLS. The next chapter develops a conceptual framework for enhancing and understanding legal pluralism in LASs with their legal frameworks.

8 Analysis of Peri-Urban Land Administration

8.1 Introduction

In this chapter, I examine the findings from RLM and the institutional isomorphism theory to develop a conceptual framework for understanding as well as enhancing legal pluralism in LASs with their legal frameworks. As narrated and described in Chapters 5, 6, and 7, the case study analysis is undertaken in this chapter. In the previous chapters, the LASs with their legal frameworks were described using the lens of legal pluralism. In addition, the FFPLA were used to determine the pro-poor nature of the current LASs with their legal frameworks (see 8.6). LASs with their legal frameworks in the case study areas are classified into weak (state-centred legal pluralism) and deep (strong) legal pluralism. The general characteristics of weak legal pluralism and deep legal pluralism are derived by triangulating evidence from each of the case study areas.

8.2 Weak and Deep Peri-Urban Land Administration Systems and Their Legal Framework

RLM criteria, as discussed in section 7.6, are used to assess weak and deep systems of LASs with their legal frameworks. The 8R indices of RLM (see section 4.4.2) were used in the analysis. Each case was analysed for each of the criteria of RLM in section 8.3 using the data collected (see section 7.6). Detailed scoring using Likert scales is done in the following sections. In Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti Likert scores above 60% are considered to indicate deep legal pluralism. In contrast, those below 60% are considered to indicate the existence of weak legal pluralism in LAS. This distinction is made as the name indicates, with deep legal pluralism supporting *inherent* LASs with their legal frameworks while the weak legal pluralism supports *inherited* LASs with their legal frameworks. When deep the scores are higher and when weak the scores are lower.

8.2.1 Resilient and robust

In the case study narratives in Chapter 7, indicators such as the application of customary law; collaboration between customary and statutory institutions; interactions between the

people and customary institutions, and interactions between the people and statutory institutions; and recognition of innovative ways of recording land rights are assessed. The fieldwork data are graded using a Likert scale, as shown in Table 8-1. For this scale 1 is poor and 6 is excellent (see sections 7.6.1 and 7.6.2).

The first two measures relate to resilience and robustness. The non-recognition of customary law in land administration structure scores 3, 4, and 2 as there may be no flexibility in the land administration process. A score of 2 is assigned where there are inconsistencies and contradictions in the LUA which affect peri-urban land administration. A score of 6, 4, and 6 is assigned where there is a community dispute resolution committee in the three peri-urban areas. There is a collaborative approach in the appointment of TLG. All family members are assembled with the family head - thus a score 4 is appropriate. Because there are no innovative ways of recording land rights recognised in the SLF, a score of 1 is chosen. The extent to which statutory institutions are collaborating with customary institutions score 1, 1 and 2 respectively because the interaction is found to be informal and not mandated by law. A score of 6, 5 and 6 is assigned to interactions between the people and the customary institutions while interactions between the people and the state scores 2, 1, and 1 respectively as there is no cordial relationship between these role players. The lack of development of land administration tools to aid land management in both customary and statutory processes scores 1.

In assessing resilience and robustness in peri-urban land management, there are nine questions each scored out of a total of six, so the total possible score is 54. The scores for the three peri-urban areas are similar, with each one scoring 26, 23 and 25. It is generally observed that accommodation of the flexibility in customary law, collaborations between customary and statutory institutions, and recognition of innovative ways of recording land rights are lacking in the case study areas (see Table 8-1). Adopting a cooperative over combative legal pluralism approach may improve the situation (see sections 2.3.1 and 6.3).

Further analyses are done with the remaining criteria for the case study areas. The results are presented in the following sections.

Table 8-1. Assessing Resilient and Robustness in LAS

Resilient and Robust	**Ikere-Ekiti**	**Ijero-Ekiti**	**Oye-Ekiti**
Does the formal land administration accommodate customary law flexibility?	3	4	2
What are the inconsistencies and contradictions in the LUA in respect of the structure of the committee in charge of land matters?	2	2	2
Is there a community dispute resolution committee in the three peri-urban areas?	6	4	6
How are members of traditional land governance appointed?	4	4	4
Are innovative ways of recording land rights recognised by the Statutory Legal Framework (SLF)?	1	1	1
Are statutory institutions collaborating with customary institutions in LA in peri-urban areas?	1	1	2
Are there interactions between the people and customary institutions?	6	5	6
Are there interactions between the people and the state?	2	1	1
Are land administration tools developed to aid land management in customary and statutory processes?	1	1	1
Total (54)	26	23	25

Scale 1-poor, 2-fair, 3-average, 4-good, 5-very good, 6-excellent

8.2.2 Reliable and respectful

Reliability and respectfulness in land management are presented in sections 7.6.3 and 7.6.4, with the responses used in this section. The illegitimacy of the NSJS scores 1 because the NSJS is not recognised as legitimate as the state justice system. The state justice system in some instance failed to recognise the decisions of the NSJS. Public officials are accountable through the processes of SERVICOM, hence the score of 6. However, corruption is still in the land administration process. The score of 3 is assigned to land accessibility by peri-urban dwellers because the majority of farmland is converted to residential use causing the price of land to rise astronomically. The statutory land registration process and the land use planning processes score 1 as both are rated to be poor because there is no effective and efficient land administration services. Land administration scores 3 as there are mixed results if peri-urban land administration needs have been addressed (see 7.6.3 and Table 7-4). Compensation payment issues score 2 as compensation is paid only on improvements to the land. Avenues to seek redress when dissatisfied with compensation payment score 2, as the only avenue provided is to approach the statutory courts. This process is tedious and requires considerable financial means to seek redress in court. The treatment of men and women as per land access scores 5 for Ikere-Ekiti and Oye-Ekiti and 4 for Ijero-Ekiti. In Ijero-Ekiti there is a 52% yes and a 48% no which makes it average. Forms of corruption in land access score 3 since there is still corruption in land access, but measures are provided to dispel it. The scores for eviction rates varies across the three peri-urban areas. In Ikere-Ekiti a score of 6 is given since the eviction rate is one out of ten. A score of 5 is given in Ijero-Ekiti as eight out of ten respondents said there is no eviction. In Oye-Ekiti a score of 2 is given since seven out of ten respondents said there is eviction in land access (see 7.6.4 and Table 7-5).

There are 11 questions related to reliability and respect, so the total score for assessment is 66; yet none of the three peri-urban areas scored more than 50%, with Ikere-Ekiti having 33 (50%), Ijero-Ekiti 32 (48%), and Oye-Ekiti 30 (45%). The findings are similar across the

three peri-urban areas as shown in Table 8-2. Since the NSJS is not recognised as a state justice system, this situation can be likened to what Swenson (2018) termed competitive legal pluralism (see 2.3.1.2). There is a deep tension between the NSJS and the State justice systems because the NSJS maintains some autonomy without recourse to state institutions. There is a disconnect in land administration since the land registration process and land use planning are not effective and are under the control of state institutions without involvement of customary institutions. Finally, compensation for state acquired land and associated evictions is an issue that depicts weak legal pluralism in land administration. The mode of payment and the process of seeking redress over inadequate payment is defective as it involves state institutions alone. The dominant role played by state institutions can be termed a situation of combative legal pluralism as the state systems are hostile to non-state systems (see 2.3.1.1).

Table 8-2. Assessing Reliability and Respectfulness in LAS

Reliability and Respectfulness	**Ikere-Ekiti**	**Ijero-Ekiti**	**Oye-Ekiti**
Is NSJS legitimate as a state justice system?	1	1	1
Are public officials, agencies, and non-state actors accountable to the public concerning LA?	6	6	6
How do the state and local governments make land accessible?	3	3	3
How can you rate the statutory land registration processes?	1	1	1
Is land use planning functioning well in this community?	1	1	2
Are land administration needs addressed?	3	4	3
How are people compensated when their land is acquired for public purposes?	2	2	2
Are there free and fair avenues to lay such complaints when not	2	2	2

satisfied with the compensation paid?			
In accessing land, are women and men treated the same?	5	4	5
In accessing land in the state, are there any forms of corruption?	3	3	3
Have you ever been evicted from your land in this community?	6	5	2
Total (66)	33	32	30

Scale 1-poor, 2-fair, 3-average, 4-good, 5-very good, 6-Excellent

8.2.3 Reflexive and retraceable

The case study narratives for reflexiveness and retraceability are discussed in sections 7.6.5 and 7.6.6. This section uses the findings to rate each question asked to obtain a total score for each peri-urban area. Reflexiveness and retraceability in land management are assessed in Table 8-3 in which a total score of 36 is possible. The same score of 27 (75%) is obtained across the three peri-urban areas. Since customary law is still in existence this scores 6 because there are areas where statutory laws cannot govern appropriately. The challenges of integration of customary and statutory laws score 3, because of the rigidity of statutory laws. This average result is because customary law is still in existence but not as functional as it could be because it is difficult to integrate with statutory law. The use of customs and norms scores 6 as it shows a participatory approach in resolving land disputes. The availability of customary land laws to community members scores 5 as the understanding of the law is what is carefully explained to the people. The interventions in land management score 5 because the interventions are clear, but they are statutory interventions alone. There is a lack of clarity in the procedures of LAS and so this only scores

2 depicting weak legal pluralism. Statutory laws are the only laws that govern land administration, with LUA not known to peri-urban land rightsholders.

Table 8-3. Assessing Reflexiveness and Retraceability in LAS

Reflexiveness and Retraceability	Ikere-Ekiti	Ijero-Ekiti	Oye-Ekiti
Why is customary law still in existence?	6	6	6
What are the challenges of the integration of customary and statutory laws?	3	3	3
How are customs and norms used to resolve a dispute on land?	6	6	6
How are customary land laws made available to community members?	5	5	5
Are the interventions in land management clearly defined?	5	5	5
Is there clarity in the procedures of LAS?	2	2	2
Total (36)	27	27	27

Scale 1-poor, 2-fair, 3-average, 4-good, 5-very good, 6-Excellent

8.2.4 Recognisable and responsive

The case study narratives examine the recognition and responsiveness of land management in sections 7.6.7 and 7.6.8. This case study narrative is used in the scoring across the three peri-urban areas. The total score available in this assessment is 42. Ikere-Ekiti, Ijero-Ekiti and Oye-Ekiti score 28. The scores of 67% indicate deep legal pluralism in land administration in all three peri-urban areas. The engagement of community members in land administration scores 4, 4, and 3 respectively because some kind of participatory approach was adopted but needs improvement in all three peri-urban areas. The customary courts' way of addressing land matters scores 2, 2, and 3 (see Table 8-4) because the customary court is more of a regulative framework than a cultural-cognitive framework, indicating weak legal pluralism in which statute law dominates. The composition of TLG

scores 4 because both men and women are represented in TLG but still men dominated. The institutional capacity of traditional institutions scores 5 because they use customary laws to administer land in the three peri-urban areas despite the non-recognition by state actors. This is a situation of deep legal pluralism in complementary legal pluralism (see 2.3.1.4). The collaborations between TLG and the statutory institutions are poor, indicative of weak legal pluralism (see section 8.4.1.2). Regarding service delivery, the process to complain about inefficiency scores 6 as there are well laid down channels of complaint through SERVICOM.

Table 8-4. Assessing Recognisability and Responsiveness in LAS

Recognisability and Responsiveness	**Ikere-Ekiti**	**Ijero-Ekiti**	**Oye-Ekiti**
How are community members engaged in the land administration process?	4	4	3
Is the customary court addressing land matters the way traditional courts do?	2	2	3
How are men and women represented in the TLG?	4	4	4
Do you think the exception of traditional authorities from customary court affects the legitimacy of the customary legal framework?	5	5	5
Do traditional authorities have the institutional capacity to administer land using customary law?	5	5	5
What is the level of collaboration of TLG with statutory institutions?	2	2	2
How are complaints of inefficiency made?	6	6	6
Total (42)	28	28	28

Scale 1-poor, 2-fair, 3-average, 4-good, 5-very good, 6-Excellent

8.3 Using the RLM Matrix to Evaluate the LAS in Ekiti State

In Section 2.4.3, the RLM matrix is fully explained (de Vries and Chigbu, 2017). This section applies the RLM matrix to the LAS in Ekiti State to determine the extent to which the structures, processes, and impacts may be described as 'responsible'. The land management matrix is developed using the narratives in Chapter 5 and the analysis in section 7.6. Each of the 8R indicators of RLM is ranked on a scale of 1 to 6, where 1 is poor and 6 is excellent. Any score between 1- 3 is unsatisfactory and poor and needs improvement, while any score between 4-6 is considered satisfactory but needs improvement.

Integrating the qualitative and quantitative data for RLM results in the RLM matrix (see Table 8-5). There is convergence in the findings of the three peri-urban areas. The indicators interrogated showed that every aspect of the structure needs improvement, with only responsive considered satisfactory. For the indicators of the process, only resilient are deemed satisfactory but need improvement. Considering the impact of LAS, the RLM indicators used in assessing land management reveal a lack of positive impact on the people, as most of the indicators are poor. The effect shows a lack of significance for the people. In Table 8-5, the colour coding of orange is given to scores between 1 and 3 (unsatisfactory), while between 4 and 6 are green (satisfactory). There were no indicators that scored 5 or 6.

Table 8-5. Assessing Structure, Process, and Impact in Land Administration: An Example of Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti

	Responsible land management indicators								
LAS in Ekiti State		Resilient	Robust	Reliable	Respected	Reflexive	Retraceable	Recognizable	Responsive
	Structure	3	2	3	3	2	3	3	4
	Process	4	2	3	3	2	2	2	3
	Impacts	2	3	2	2	2	2	2	3
	Average	3	2,3	2,7	2,7	2	2,5	2,5	3,3

Scale 1-poor, 2-fair, 3-average, 4-good, 5-very good, 6-excellent

8.3.1 LAS structure

The first measure relates to the LAS structure (see Table 8-5). Resilience is categorised as a 3 because community dispute resolution committees are available in the three peri-urban areas studied. However, the land administration structure does not accommodate customary law flexibility, local orders do not govern land administration, and there are inconsistencies and contradictions in LUA concerning the composition of committees in respect of land administration in rural and urban areas. The LAS scores 2 for robustness. Formal collaborations exist between statutory institutions, while informal collaboration exists between customary and statutory institutions. No collaborations are evident between customary and statutory institutions, the local respondents, and the state institutions, while there are collaborations between the local respondents and traditional institutions. For reliability, the LAS score is 3, as NSJS are not as legitimate as the state justice system. The LAS structure score is 3 for respected, as the structure for compensation is defective, tedious, and cumbersome. A significant number of people's land rights are respected. When accessing land, men and women are generally treated the same way.

For reflexivity, the LAS structure score is 2, as the norms and practices in land administration are recognised within customary law. Recognising customary law is also flexible and used to effectively govern areas that cannot be managed with statute law. The LAS structure score for retraceability is 3 as there is fragmentation in the roles and responsibilities of MHUD, BLS, & OSG. There are too many bureaucracies which may be the cause of too many political office holders heading these institutions. The LAS structure score for recognisability is 3 because TLG includes family heads, chiefs and Obas in land governance, and men and women are included in the land committees. The legitimacy displayed by the customary courts is more regulative than cultural-cognitive frameworks. Finally, the LAS structure score for responsiveness is 4; there is a feedback mechanism through SERVICOM to entertain complaints of inefficient and ineffective service delivery.

8.3.2 LAS process

The second set of measures relates to the process (see Table 8-5). LAS's process scores 4 for resilience as land alienation in customary areas is done with the consent of the family heads, chiefs and Obas, as the case may be. For land having a certificate of occupancy, the consent of the Governor is sought for land alienation in urban areas. Concerning robustness, the LAS process scores 2 as innovative ways of recording land rights are lacking, a paper-based system of land documentation is in operation, and there is a lack of use of technology by an expert in land administration. The LAS process scores 3 for reliability as public officials are held accountable through the heads of institutions and SERVICOM. Erring chiefs are referred to the palace administration for sanctions. However, the registration process is still marred with corruption leading to distrust in the system. The respected LAS process scores 3 because the process of paying compensation is defective, and the Governor shows a lack of respect for the rights of people whose land is acquired. The LAS process ranks 2 concerning reflexiveness as the knowledge of statute law is lacking in peri-urban areas. However, customary laws are explained to the people. For retraceable, the LAS process ranks 2 because land registration procedures are unavailable in the public domain. The paper-based system of land documentation makes tracing land records difficult. The LAS process ranks 2 in recognisability as the participatory approach to land administration is lacking. However, traditional authorities have the institutional capacity to administer land using the norms and customs of the area. Finally, regarding responsiveness, the LAS process ranks 3 as collaborations and interactions between customary and statutory institutions exist only during land acquisition.

8.3.3 LAS impact

Lastly, the third set of measures relates to the impact (see Table 8-5). The LAS impact ranks 3 for robustness and responsiveness while all others rank 2 for the following reasons:

- Resilience: non-recognition of traditional institutions in land administration has made the peri-urban populace depend on statutory institutions for recording their land rights. Hence, land tenure may not be certain.
- Respected: land acquisition by BLS has deprived most of the peri-urban populace of their means of livelihood, and compensation is paid only for improvements on the land and not for the land itself (there is thus no compensation for undeveloped peri-urban land), leaving the majority of the peri-urban displaced people without compensation (when their land has been acquired by the state. This is even harder to bear when it is not developed).
- Unreliability, inefficiency, and ineffectiveness affect land administration service delivery. Land administration needs are not addressed as land is not readily available. There is no master plan for Ekiti State making land use planning not effective. The land registration system is inefficient making majority of peri-urban land not recorded. The process of seeking redress when compensation is inadequate is long, tedious and associated with high costs, making most peri-urban dwellers not able to afford redress in court.
- Despite all the mechanisms put in place, there is still the likelihood of corruption. Corruption in LAS results in poverty and inequality in peri-urban areas. Statute law is rigid, while customary law is flexible.
- Recognisable: Customary courts do not address land matters the same way as the traditional courts. The use of the regulative framework in customary courts excludes most peri-urban dwellers as most of the customary courts adopt principles similar to statutory courts.

All these impacts make the current LASs with their legal frameworks lack significance for peri-urban people; hence sustainability is unsure.

8.4 Classification of Weak and Deep Legal Pluralism in Land Administration Systems

Determining whether the LASs with their legal frameworks displays weak or deep legal pluralism relies on the findings in the case study areas. However, these converge in most instances while only diverging in a few instances. The analysis in this section will depend on the entire findings as a representation of the Ekiti State. The factors required to determine weak or deep legal pluralism in LASs are not static but dynamic (Swenson, 2018). They are dynamic because they can change over time depending on the design of LASs. The use of customary forms of law, tenure, and administration may greatly influence how weak and deep legal pluralism is distinguished in land administration in peri-urban areas (see sections 7.6.1 and 7.6.2).

8.4.1 Analysing where legal pluralism in land administration is considered weak

Table 8-6 illustrates the indicators used to determine whether the legal pluralism in LASs is a weak or deep. In this context, weak legal pluralism in LASs means the extent to which customary law, tenure, and administration are recognised in statute law as an alternative form of law, tenure, and administration. Using the 8R indicators of RLM, the case study LASs are assessed in respect of weak or deep legal pluralism. Resilience and robustness score 46% while reliability and respectfulness score 48%, respectively. Reflexiveness, retraceability, recognisability, and responsiveness score above 60% (see Table 8-6). These results indicate a state of a mix of weak and deep legal pluralism in LASs. The weak legal pluralism in LASs may be explained by a policy of interference in land use planning, land title registration, and issuance of a formally registered lease, as well as non-recognition of the role of traditional leaders in peri-urban LASs. The non-recognition has made the governments play dominant roles in customary and statutory land management. The MHUD, BLS, and OSG strongly influence local land management in peri-urban areas (see sections 5.6.3 and 7.6.3). In generating revenue from local land management, all the payments go to the state coffers (see 5.6.3.1). The state of weak legal pluralism depicts what

Swenson (2018) termed competitive legal pluralism (see 2.3.1.2). The policy of interference denies the customary system autonomy in peri-urban LAS.

Using the analysis in section 8.2, the weakness in legal pluralism in LAS is further depicted; resilience, robustness, reliability, and respectfulness scores are just less than 60% (see Table 8-6). It was observed that customary law flexibility is not accommodated within the formal LAS. There are inconsistencies and contradictions in the committee supporting land management in peri-urban areas, mainly derived from statutory institutions. Pro-poor ways of recording land rights are not adopted by statutory institutions. There is a lack of collaboration between the customary and statutory institutions and between the people and the state (see 7.6.1 and 7.6.2). All this negatively impacts the indigenous community and will result in weak legal pluralism in LASs. However, since the results are close to 60%, the improvement needed to achieve deep legal pluralism in LASs is achievable.

Table 8-6. Analysing Legal Pluralism in Land Administration

Responsible Land Management Indicators	**Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti**	**%**
Resilient and Robust (54)	25	46
Reliability and Respected (66)	32	48
Reflexive and Retraceable (36)	27	75
Recognisable and Responsive (42)	28	67
Total (198)	**110**	**56**

In Table 8-6, reflexiveness, retraceability, recognisability, and responsiveness all scored above 60%, contributing to deepness in legal pluralism in LASs. Customary law is still in existence, however there are challenges for integration which might be the rigidity in statutory law and the lack of codification of customary law. Customs and norms are used to

resolve disputes on land with customary land laws available to community members. Interventions in LASs are clearly defined but there is lack of clarity on the procedures of LASs. Community members are engaged in land administration, but this needs improvement. Customary courts use a regulative framework to address land matters which is different from the cultural cognitive framework adopted by the traditional court. In TLG, men and women are represented. The legitimacy of customary legal frameworks is not affected by the exception of traditional leaders. Customary law is used to administer land by traditional leaders. The level of collaboration of TLG with statutory institutions is very poor. Customary and statutory institutions have structured channels of complaint for inefficiency in land administration services delivery.

It was asserted in section 2.2.2 that customary law, tenure, and administration remain resilient despite all efforts to suppress them with statutory law, tenure, and administration. An adaptation theory is preferred to the replacement theory (see 2.2.2). Ontologically, suppressing customary law, tenure, and administration is detrimental to peri-urban landowners. Statutory law is rigid (see 7.6.5; 8.3.3), registered land tenure (title, deed or lease) imposes a limitation on ownership as ownership becomes fixed-term and favours individualisation of land (see 8.6.1), and administration is faced with several challenges (see 5.6.3.1; 5.6.3.5). Rapid urbanisation is occurring in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti (see 7.2, 7.2.2 and 7.2.3), resulting in high demand for land. Consequently, it affects land use and land development. Rural and urban migrants search for land for residential and agricultural purposes. Conversion of agricultural land to residential land is increasing as there is high demand for land for residential purposes. This situation has been exploited by both the land rights holders and the traditional leaders (see 5.5.3). Ijero-Ekiti has additional pressure on land, which is illegal mining sites (see 7.2.2; Figure 7-3). All these activities add pressure to peri-urban LASs. MHUD, BLS, and OSG manage peri-urban land administration by creating Area Offices in the peri-urban areas. Despite the creation of these Area Offices, all applications for building plan approval and Surveyor-General approval are

taken to the head office in the state capital (see 5.6.3.1; 8.3.1). This deconcentration (instead of decentralisation) of land administration activities contributes to weak legal pluralism in LASs. The need for local capacity and autonomy using a decentralisation strategy is highlighted by Ho *et al.* (2021).

8.4.1.1 Non-application of customary law in land administration

Peri-urban cases studied do not apply customary law in peri-urban land administration (see 5.5.2). The land law used in land administration failed to recognise customary law flexibility (see 7.6.1). Besides the statutory institutions that give the order to govern land in peri-urban areas, local leaders give orders that the government initiates. None of these orders is governed by customary law. The statutory authorities did not believe in the validity of customary law in land administration (see 7.6.1). The government should respect local people's traditions (Tegnan, 2015). Hull and Whittal (2021) state that government should be able to recognise, respect, and protect the rights of its people to achieve land rights for all. Respecting people's tradition falls under human rights obligations.

Customary law recognises freehold, while statute law recognises rights of occupancy. These rights of occupancy can either be customary or statutory rights of occupancy. The granting of these rights of occupancy have been the subject of a statutory legal framework for land administration, thereby suppressing the customary legal framework for land administration (see 6.2.1). This result corroborates Tegnan's (2015) finding that customary law is being neglected in West Sumatra. The non-recognition of customary law to govern people's land rights by statutory institutions contributes to weak legal pluralism.

The observance of customary law in the courts of law in Ekiti State shows that customary law is relegated to being observed at the discretion of the court (see 6.2.1; 6.2.2; 6.2.3 and 6.2.4). Customary courts and CCAS are established to observe customary law in land administration. Section 6.3.5 shows a conflicting pressure affecting the jurisdiction and legitimacy of the customary court and the CCAS. This form of conflicting pressure is a

coercive and mimetic isomorphism, which reduces the jurisdiction and legitimacy of the customary court and CCAS resulting in weak legal pluralism in land administration.

8.4.1.2 Lack of collaborations between customary and statutory institutions

The case study narratives show a lack of collaboration between customary and statutory institutions (see section 5.7; Figure 5-7 and Figure 5-8). Section 7.6.2 shows that there is formal and informal collaboration in LASs in peri-urban areas of Ekiti State, with formal collaboration showing a cordial relationship between statutory institutions in LASs (MHUD, BLS, and OSG). The informal collaborations show that the only point of collaboration is when land is acquired by the state, which serves as a notice for land acquisition. The non-recognition of customary institutions in land administration may affect the needs of peri-urban land users, affecting LAS's reliability (see 7.6.3).

Customary institutions have been involved in traditional land management for many years, which can help with orderliness in society (Akrofi, 2013). If traditional land management is formally recognised, executing government policies in peri-urban areas becomes very easy. Recognising traditional land management will create what Swenson (2018) termed 'cooperative legal pluralism' (see 2.3.1.3).

8.4.1.3 Legitimacy and jurisdiction of customary courts and the CCAS

Land litigations are widespread in peri-urban areas of Ekiti State due to the high demand for land. The disputes range from issues of customary and statutory rights of occupancy, declaration of title to land, customary landlord and customary tenancy, and trespass issues (see 6.2). These disputes often end in formal courts as the NSJS is not recognised as legitimate compared to the state justice system. A ruling may then be made in contradiction to the decisions in the NSJS (see 7.6.3). There are instances where a traditional leader trying to protect social norms and customs on land subject to stool land was brought before a high court (see 6.2.4). This land dispute should be subject to a customary court where customary law is expected to be applied. Customary laws are not applied the way they should be applied (see 6.2.1 and 6.2.4).

Section 1.3.2 presents the research question: how customary are the customary court and the CCAS? How is customary law applied in a customary court and the CCAS? It is shown that conflicting pressures are exerted on the customary court and the CCAS to situate the customary court and the CCAS within the customary law framework and the Ekiti State judicial system (see 6.3.5). Adopting the approach of the statutory court in customary court proceedings defeats the purpose of the establishment of customary courts, which is to guarantee the resolution of disputes among disputants "without resorting to harsh and complex common law mechanism" (Ermakova, Protopopova and Pukhart, 2019: 1283 citing Olubor, 2000). In addition, the CCAS jurisdiction is reduced as it is disallowed to entertain appeals alleging breach of fair hearing in customary courts (see 6.3.5). To maintain its legitimacy, the CCAS needs to adjust and maintain its jurisdiction as stipulated by the Constitution.

Peri-urban land rights holders are not taking their land-related conflicts to customary courts because they do not address land matters like traditional courts (see 7.6.7). A traditional court is defined in section 1.2.8. This is because customary courts display more regulative legitimacy than cultural-cognitive legitimacy (see 3.5.1 and 3.5.2). However, customary institutions showed cultural-cognitive legitimacy (see 8.3.1). The display of regulative legitimacy by the customary court reflects state-centred pluralism of law (weak legal pluralism in land administration).

8.4.1.4 Lack of recognition of pro-poor approaches to recording land rights

Section 2.2.2 discusses the importance of adopting pro-poor land administration that is 'fit-for-purpose' and 'fit-for-people'. Informal/customary LASs in these peri-urban areas are still dependent on the formal LAS. Innovative ways of recording pro-poor land rights are lacking (see 7.6.2 and 8.6.1). Customary land is demarcated using precise survey measurements (see 8.6.1). The over-dependence on precise survey measurements may be linked to weak legal pluralism in land administration. Weak legal pluralism in land administration adopts approaches that fail to uncover indigenous knowledge and build local

capacity for land administration. See also Arko-Adjei (2011) for discovering indigenous knowledge and building local capacity in land administration.

Using pro-poor tools in land administration may encourage a participatory approach to land administration (see Arko-Adjei, 2011). Pro-poor tools are developed to be flexible, and flexibility aids the usability of the tools. The state needs to recognise formally the pro-poor tools in land administration. The recognition needs to be built into policy for land administration. This is when land administration can be robust (see 7.6.2), and the legal implication will be deep legal pluralism in land administration.

A locally based land recordation system is lacking in the peri-urban areas studied, causing most land rightsholders to be excluded from the system that governs land administration (see 8.6.1). Statutory leasehold is prevalent over customary leasehold, favouring individualisation of land in peri-urban areas (see 8.6.1). In a state of weak legal pluralism, the individualisation of land is bound to be prevalent.

8.4.1.5 Land acquisition and compensation payment

Compensation payment on state acquired land is problematic because compensation payments are only for improvements to the land, while there is no compensation for the land itself (see 7.6.4). There may be a lack of respect for land rights holders' needs as the land itself is an asset that needs to be compensated for when acquired. Most of the land acquired is not developed and compensated for, depriving peri-urban users of their livelihoods. This mars any positive impact of LASs on peri-urban dwellers (see 8.3.3).

In terms of compensation for acquired land, the level of power ascribed to the Governor of the state is what best describes weak legal pluralism in land administration. Weak legal pluralism, as a form of state-centred law, ascribes all power to statutory institutions as regards land administration. This legal pluralism can be combative as it subjugates customary institutions in determining compensation payments.

8.4.1.6 Lack of participatory approach to land administration

The participatory approach to land administration is not given much attention in the case study areas (see 7.6.7 and 8.6.1). Apart from Ikere-Ekiti and Ijero-Ekiti, where community members are involved in land administration, most people in Oye-Ekiti are not involved in land administration (see 7.6.7). In Oye-Ekiti, traditional leaders stated that land rights holders are not involved in land administration. A participatory approach to land administration must be strengthened to uncover local indigenous knowledge and build local capacity in land administration. Arko-Adjei (2006) states that a participatory approach to land administration at local level is crucial to ensure sustainable land management. The lack of a participatory approach to land administration may contribute to weak legal pluralism or what Swenson (2018) termed 'combative legal pluralism' (see 2.3.1.1).

8.4.1.7 Non-recognition of traditional institutions

The role of traditional institutions in the constitutions is undermined. As a post-colonial institution co-opted into land administration during colonial rule, using indirect rule requires formal recognition in LASs. The TLG have no formal interactions with statutory institutions in land administration (see 7.6.8). The non-formal recognition of the role of traditional institutions in land administration (see 7.6.7) can only be likened to a state of weak legal pluralism in land administration. This state of weak legal pluralism is also shown in that the governor is seen to usurp the powers of the traditional leaders as land is vested in the Governor of the state (see 8.6.1). The role of traditional leaders in land management is critical as most of the land is obtained from the customary land tenure system.

8.4.1.8 Non-recognition of non-state justice system (NSJS)

A community dispute resolution committee, as NSJS, is available in the three peri-urban areas studied (see 7.6.3). The availability of a community dispute resolution committee indicates that the pressure on the formal courts can be reduced if the NSJS is formally recognised. The NSJS can be strategically recognised by bridging, harmonisation, and incorporation (see 2.3.2.1, 2.3.2.2 and 2.3.2.3). In using these approaches, the state should

allocate land cases to the NSJS and allow each to resolve land disputes using the respective norms and customs of the area where the land is located. The non-formal recognition of the NSJS will result in weak legal pluralism, which can be combative or competitive (see 2.3.1.1 and 2.3.1.2). In combative legal pluralism, the normative customary and statutory legal systems are not equally accepted, while in competitive legal pluralism, some forms of autonomy are retained by non-state actors.

8.4.1.9 Rights, restrictions, and responsibilities (RRR)

The land administration's legal, institutional, and regulatory framework fails to define peri-urban areas' rights, restrictions, and responsibilities (see 8.6.1). The RRR on the part of the people and the government are not cleared. The RRR on the part of the government are key as they affect the type of legal pluralism at play. For instance, despite the lack of a master plan for the peri-urban areas, land use and development approval is undertaken at the land officers' discretion, creating ineffective land use planning and development (see 7.6.3 and 8.6.2). The approval of building plans is used to generate revenue centrally without input from traditional institutions. This is a situation of state-centred legal pluralism (weak legal pluralism in land administration). Peri-urban development is impacted without a good master plan (see 8.3.3). Planning and land laws are made without recourse to local people; this causes a disconnect between the people and the government (8.6.2). The making of laws without input from customary institutions is a state of weak legal pluralism in LASs.

8.4.2 Analysing the deepness of legal pluralism in land administration

In analysing LASs in the three case study areas, the traditional land management, the presence of a community dispute resolution committee, a collaboration between the customary institution and the people, land acquisition and compensation, a participatory approach to land administration, and legitimacy and jurisdiction of the customary legal framework, all contribute to deep legal pluralism in land administration. Deep legal pluralism is when customary law, tenure, and administration exist even when it is not recognised by the state (see 2.3.1).

8.4.2.1 Application of customary law in traditional land management

Section 2.2.2 discusses the resilience of customary law, tenure, and administration in SSA. It shows that despite suppression by statutory law, tenure, and administration in colonial and post-colonial times, customary law, tenure, and administration survive to date. Customary law still exists because most peri-urban areas cannot be governed effectively with statute law alone (see 7.6.5). The use of customary law also helps to guard against the sale of one land parcel to two different people without their knowledge. In the three peri-urban case study areas, the traditional leaders have the customary institutional capacity to administer land using customary law (see 7.6.5 and 7.6.7). The TLG includes the traditional leaders, chiefs, and family heads. The family and community members participate in traditional land management. For TLG, the family under the family head appoints men and women to manage family land, which is done by assembling all family members under the family head (see 7.6.1). However, the land committees are dominated by men (see 7.6.8). The dominance of the committee by men empowers men more than women in land matters. The family sets rules using norms and customs to govern land use and development. The state of traditional land management in the peri-urban areas depicts deep legal pluralism in land administration. Deep legal pluralism in land administration is a situation whereby land is administered by the traditional head, chiefs, and family members with or without recourse to statute law.

Palace administration handles the matters relating to the misbehaviour of any chief as it pertains to land administration (see 7.6.3). The reported cases are resolved using the norms and customs of the peri-urban areas concerned. The traditional leaders lack trust in the formal land registration system as there is no clarity in the process, which is very tedious and cumbersome (see 7.6.3).

8.4.2.2 Collaborations between the customary institutions and the people

The case study narratives show collaborations between the customary institution and the people on land administration (see 7.6.2). Both indigenes and non-indigenes obtain land

using the customary law of the areas where the land is situated (see 8.4.2.1). This form of collaboration depicts deep legal pluralism in land administration. Customary land laws are available to the people, guiding their day-to-day land usage in peri-urban areas.

8.4.2.3 Availability of community dispute resolution committee

Customary leaders are using norms and customs to resolve land disputes in the peri-urban case study areas studied because traditional leaders have become resilient to date. In determining a dispute on land, the land under dispute is visited after both parties have presented their case (see 7.6.5). Community dispute resolution explores the use of alternative dispute resolution (ADR), which promotes community harmony, unlike the formal courts, which give verdicts declaring one party guilty or innocent. The use of the community dispute resolution mechanisms depicts a deep legal pluralism which reflects cooperative and complementary legal pluralism. The NSJS retains some autonomy and authority in both forms of legal pluralism. Swenson's (2018) incorporation approach to the NSJS should be adopted where the distinction between the state and non-state justice system is removed (see 2.3.2.3).

8.4.2.4 Participatory approach to land administration

Some forms of participatory approach to land administration are observed in Ikere-Ekiti and Ijero-Ekiti. Community members are co-opted into the LASs in the peri-urban areas by the customary institution (see 7.6.7). However, in Oye-Ekiti community members are not involved in land administration. In general, the participatory approach to land administration needs improvement.

8.4.2.5 Legitimacy and jurisdiction of customary legal framework for land administration

Most of the respondents in the case study areas assert that the exception of traditional leaders from the composition of the customary court does not affect the legitimacy of the customary legal framework for land administration (see 7.6.7). The customary legal framework is still effective, efficient, and acceptable to the people. The traditional institution has the institutional capacity to administer land using customary law (see 7.6.8).

The continued existence of customary law provides legitimacy for the customary legal framework. Some levels of autonomy and authority are exercised by customary land administration leaders, creating some form of deep legal pluralism in land administration. This form of legal pluralism is what Swenson (2018) termed 'cooperative and complementary legal pluralism' (see 2.3.1.3 and 2.3.1.4).

8.5 General Characteristics of Weak and Deep Legal Pluralism in Land Administration

Similarities and differences exist in weak and deep legal pluralism in land administration, as shown in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti. Case study analysis shows that non-accommodation of non-state law by the state does not significantly affect deep legal pluralism (see 8.4.2.1 and 8.4.2.3). The analysis in all case study areas shows that customary leaders actively participate in and contribute significantly to land administration in peri-urban areas. These findings align with the literature on traditional land management (see Akrofi, 2013). Table 8-7 shows the differences between weak and deep legal pluralism in land administration. These differences distinguish a weak system from a deep system of land administration.

Table 8-7. Differences between Weak and Deep Legal Pluralism in Land Administration

	Weak legal pluralism in land administration	**Deep legal pluralism in land administration**
1.	Lack of collaboration between customary and statutory institutions	Collaboration between customary and statutory institutions
2.	Lack of participatory approach	Participatory approach
3.	Lack of recognition of pro-poor tools	Recognition of pro-poor tools
4.	Non-application of customary law	Application of customary law
5.	Non-availability of community dispute resolution mechanisms	Availability of community dispute resolution mechanisms
6.	Non-recognition of NSJS	Recognition of NSJS
7.	Non-recognition of traditional institution	Recognition of traditional institution
8.	Reduction in the jurisdiction of customary courts	Non-reduction of the jurisdiction of customary courts
9.	Regulative legitimacy	Cultural-cognitive legitimacy
10.	Compensation for improvement of land	Compensation on the land itself

8.6 Analysis using Fit-for-Purpose Approach

Based on the narratives in Chapter 5 and case study narratives in Chapter 6, the current LASs in Ekiti State is examined against two of the three major components of the FFPLA, as shown in Figure 4-4. The 'fit' and 'purpose' of the FFPLA are essential when analysing the country-specific context of land administration. The LASs is analysed for its pro-poor approaches based on the data from Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti. The fit is to determine if the current LASs is fit for peri-urban areas in Ekiti State while considering the purpose of carrying out the current LASs.

8.6.1 Legal framework

The present legal and regulatory framework for land administration follows the colonial administration (5.6.1). The statutory legal framework suppresses the customary legal framework for land administration (see 7.6.1). Customary courts and the CCAS are provided by the statutory legal framework for land administration with both limiting jurisdictions experiencing regulative legitimacy (see 6.3.5).

The recognition, recording, and review of land rights in the three peri-urban areas are not centred on ensuring tenure security. Recognition of land rights is given to land recorded in a formal deed or title land registry (see 6.2.1, 6.2.2, 6.2.3 and 6.2.4). The full continuum of land rights (UN-Habitat, 2008) is not recognised in national land policy and is not supported by the Constitution (see sections 5.4 and 5.5). In recording land rights, professional land surveyors are the only ones empowered to carry out boundary demarcation according to survey rules and regulations. Review for integration and possible updating of the system is lacking as registration of rights in the land register is centralised and based on the manual recording.

Statutory leasehold is prevalent over customary leasehold in the three peri-urban areas of Ekiti State. Statutory leasehold favours individualisation of land. In the peri-urban areas of Ekiti State, vast ranges of tenure are in existence, from informal to formal as well as

customary land tenure types, which can be captured in a single database (sections 5.4 and 5.5).

The LASs neither addresses tenure security nor supports pro-poor approaches (see 7.6.2, 7.6.3). Firstly, locally based land recordation systems are not in existence in the three peri-urban areas of Ekiti State. For LASs to be pro-poor, locally based land recordation systems should run parallel with state-based systems (Zevenbergen *et al*. 2013; Enemark, McLaren and Lemmen, 2016). Secondly, a participatory approach to recognising, recording, and reviewing land rights is lacking (see 7.6.7 and 7.6.9). The land rights holders are excluded from the system that governs land administration. This is because the design of LASs only recognises land parcel-based evidence of recognition and recording of land rights. The current legal form of evidence may provide tenure security and support to a selected few in urban areas as well as deliver information to help urban development. This form of legal evidence fails to provide tenure security and support to peri-urban dwellers and fails to provide the necessary information to help peri-urban development. Lastly, the current LASs is not co-managed between traditional leaders and formal state institutions despite most land access being through customary processes yielding customary tenure (see section 5.6.3).

Gender equity in land and property rights is not guaranteed under customary and statutory legal and regulatory frameworks for land administration. Yoruba customary law discriminates against women regarding land and property rights, with women having access to land only through their husbands or male child lineage. The statutory legal framework uses various forms of land acquisition and expropriation to deny women land access. In Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti, several land acquisitions were carried out by the formal institutions of the State, with many women displaced from their farmlands (TA1, TA2, and TA3, 2021). Despite the discrimination against women in customary law, women still accept customary law as a form of law to govern their day-to-day interactions.

8.6.2 Institutional framework

The institutional framework should distribute responsibilities, result in effective land governance, and deliver RLM. There should be institutional arrangements, and local resources should be deployed. Partnerships between customary and statutory institutions for land administration, effective policy framework, and accountable government workflows are advantageous for operationalising the system.

In the study area, land administration institutions are fragmented, causing overlaps in functions and responsibilities. The institution previously managing the four functions of LASs (land tenure, land value, land use and land development) was MLHPPUD which comprised six departments (see section 5.6.2). The MLHPPUD was later divided into OSG, MHUD, and BLS. The OSG and BLS have overlapping functions and responsibilities, causing fragmentation (see 5.6.3). For instance, the land registration system is separated from the cadastral system. Private land surveyors carry out boundary demarcation for private lands and apply to OSG for surveyor-general approval. For the land registration system, customers apply to BLS to obtain a certificate of occupancy. One institution could deal with all the land transactions from survey to registration. For land acquisition for the overriding public interest, the BLS identifies the land and then invites the OSG for the demarcation of the land. A single institution can handle identification, evaluation, and demarcation (see 5.6.3.1).

Land use management and development control are managed by MHUD using Ekiti State Urban and Regional Planning and Development Law No. 3 of 2011 (ESURPD) and Ekiti State Building Regulations 2017. ESURPD established the Planning Permit and Building Control Agency and Urban and Renewal Agency (Section 1 of ESURPD, 2011). This is an example of duplication of agencies creating overlaps in functions and responsibilities. Despite planning laws and building regulations, land use planning and development in peri-urban areas are

ineffective (TA1, TA2, TA3, 2021). These regulations did not receive any input from the local people, thus causing a disconnect between the people and the state institutions.

MHUD establishes area offices to oversee the planning and development control for peri-urban areas (see 5.6.3.4). All approvals of building plans and processing of development controls are still undertaken at the head office, causing delays. Land administration and management processes are not integrated, hindering land information from being retrieved from a central source. In addition, an overarching monitoring institution to ascertain that land administration and management institutions comply with principles of national land policy is lacking.

Examining the organisational and institutional structure as presented in sections 5.6.2 and 5.6.3, no community member is part of these institutions (see also 7.6.3). These institutions are not structured in a manner that adapts to local conditions. Cultural considerations are not built into the institutional processes, which may lack *significance*. Hence *sustainability* of the present LASs is uncertain (see Hull and Whittal, 2019). The operations structure is highly centralised with the principles of 'deconcentration' rather than decentralisation. Section 7.6 used RLM to build the case study narratives and found that the structure, process, and impact are weak (see Table 8-5).

Information communication technology is not yet applied in the LASs. Lack of application of modern technology may affect standards, hinder information retrieval, block the collaboration between agencies, increase turnaround time, hinder land service delivery, and negatively affect transparency. Recently, an OSG approval took around two to three months (PLS1, PLS1, PLS3, 2021), possibly because of the conventional method of the applicant or land surveyor going from one table to another to walk the application through. See the procedures of OSG approval as discussed in section 5.6.2.1 and illustrated in Figure 5-6. Land information cannot be retrieved easily. Data sharing is also impeded. It is necessary to

apply to the OSG before getting coordinates of control pillars needed to carry out boundary surveys.

8.6.3 Score table for FFPLA in Ekiti State, Nigeria

Drawing from the discussions in sections 8.6.1 and 8.6.2, a score table to indicate the FFP approach in land administration in Ekiti State is presented. Because of the qualitative nature of the analysis, each of the indicators of the FFP approach is ranked on a scale of 1 to 6, where 1 is poor, and 6 is excellent. In Table 8-8, scores of 1 and 2 are indicated in red, which indicates unsatisfactory, while yellow is used to identify 3 and 4, which shows there is room for improvement. The discussion above was used to rank the indicators of the FFP approach. For legal and institutional reform that will be significant and sustainable, the indicators of the FFP approach that should be addressed are shown in Table 8-8.

Table 8-8. A Score Table Based on the Assessment of the FFP Approach in Ekiti State

Key indicators			
Legal framework	**Rank**	**Institutional Framework**	**Rank**
A flexible framework designed along administrative rather judicial lines.	2	Good land governance rather than bureaucratic barriers.	3
A continuum of tenure rather than just individual ownership.	2	Integrated institutional framework rather than sectorial silos.	2
Flexible recordation rather than only one register.	2	Flexible ICT approach rather than high-end technology solutions.	2
Ensuring gender equity for land and property rights.	2	Transparent land information with easy and affordable access for all.	2

The table above identifies the 'unsatisfactory' and 'needs improvement' indicators with the FFP approach indicators. For the Ekiti State government transformation agenda, improving the scores of these indicators may help address the development of a pro-poor LAS.

8.7 The Conceptual Framework for Enhancing Legal Pluralism in LASs in Peri-Urban areas of Ekiti State

Considering the analysis in this chapter, specific and general conclusions can be deduced. This section reflects on the findings from the analysis of the three peri-urban areas to design a LASs that enhances legal pluralism. Firstly, the problem situation was structured using SSM to identify the challenges and constraints of LASs (section 7.4). The analysis of the organisation and institutional framework in the peri-urban Ekiti State shows weakness in supporting the present LASs. The legal, organisational, social, economic, political, and technical models were used in the conceptual model (Figure 7-7). The study indicates that the 'inherited legal system' dominates the 'inherent legal system' of land administration (see section 7.4.1). The organisation system model shows that MHUD and BLS lack decentralisation and a participatory approach to land administration (section 5.6.3). Discriminating law and lack of recognition of local governance is linked to tenure insecurity. The political system model shows that the local government's governance lacks significance for the peri-urban populace. For instance, local land management governance is not as legitimate as statutory governance of land management. Significance means governance structure must deliver effective and efficient services to peri-urban dwellers. Institutional and legal flexibility are inherent characteristics of traditional institutions. These inherent characteristics allow traditional institutions to adapt to change, allowing LASs to adapt to local conditions (Arko-Adjei, 2011). Customary institutions should therefore be considered legitimate statutory institutions in the land administration.

Secondly, the study assesses the structure, process, and impact upon which the current LASs is built and finds it mediocre (section 8.3). Using the RLM, the weaknesses and deepness of legal pluralism in LASs are analysed (see 8.4). On the one hand, resilience, robustness, reliability, and respectfulness indicators contribute to weak legal pluralism in LASs. On the other hand, reflexive, retraceable, recognisable, and responsive indicators contribute to deep legal pluralism in LASs. The mechanism for improvement should be aimed at reflexive, retraceable, recognisable, and responsive to create a balance between the customary legal

framework and the statutory legal framework for land administration. Measures that promote accommodation of customary law flexibility, participatory approach to land administration, decentralised institutional structure, decentralised land register, community-based land management, collaborations between customary and statutory institutions, and innovative ways of recording land rights would help enhance legal pluralism in land administration. In addition, increasing the legitimacy and jurisdiction of traditional institutions is key to strengthening deep legal pluralism in land administration.

Thirdly, the study shows that, for the case study areas, the current LAS is not pro-poor as it is not meeting the land administration needs of the peri-urban populace. Legal and institutional frameworks lack flexibility in this study. Land cases and matters are rare in the customary court in the three peri-urban areas. Only Ikere-Ekiti and Ijero-Ekiti have a few land dispute cases and matters in their customary court register. These communities see customary courts lacking legitimacy (see 7.6.7) to address land issues and prefer to take their complaints to the statutory court.

Chapter 6 presents the situation in which customary courts operate within two organisational fields: on the one hand, an organisational field that adopts customary law and on the other hand, an organisational field that situates itself within Ekiti State legal system (see 6.3.5). The customary courts and CCAS experience conflicting pressures to maintain legitimacy and jurisdiction. In designing LASs that enhances legal pluralism, there is a need to respect the jurisdiction and increase legitimacy to allow the establishment of a traditional court vested with the power to adjudicate disputes arising from customs. Enhancing the capacity of traditional courts in resolving disputes on land in peri-urban areas is a prerequisite for improving legal pluralism in LASs. Incorporating the NSJS in adjudicating disputes will create a cooperative and complementary legal pluralism that will help ensure peri-urban dwellers' tenure security (see 2.3.1.3 and 2.3.1.4). Incorporating the NSJS would naturally bring about collaboration between the state justice system and the NSJS. In designing LASs that enhances legal pluralism, there would be a collaboration that

provides interactive participation by community members in land administration. Hence, LASs could reflect both weak and deep legal pluralism that satisfies flexibility requirements (legal and institutional), pro-poor, and RLM. Nonetheless, LASs designed to enhance legal pluralism can only be implemented if the following conditions are fulfilled: application of customary law in land administration, enhancement of legitimacy and jurisdiction, collaboration between customary and statutory institutions, decentralised legal and institutional framework, and improvement in RLM (see Figure 8-1).

In section 8.8, I present the advancement of legal pluralism and measurement of tenure security in peri-urban areas of Ekiti State.

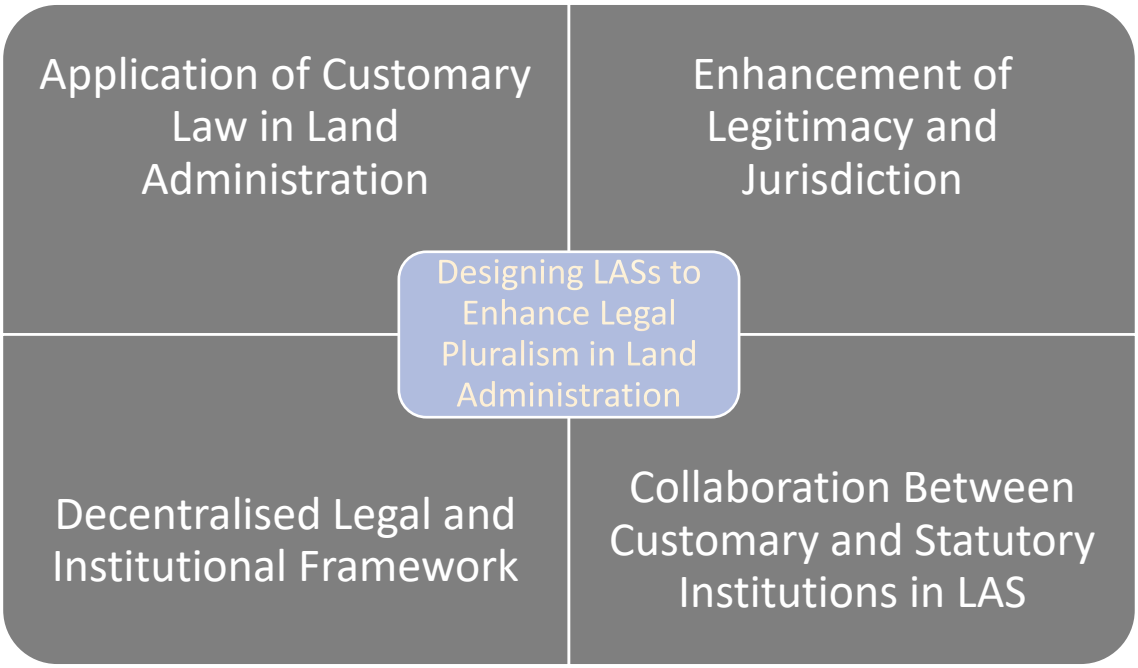

Figure 8-1. Conceptual Framework for Enhancing Legal Pluralism in Land Administration Systems

8.8 Advancement of Legal Pluralism and Measurement of Tenure Security: Developing a Legal Pluralism Model in Peri-Urban areas of Ekiti State

As discussed in Chapter 2, tenure security problems in peri-urban areas can be addressed by enhancing constitutionalism along with constitution in SSA. States having a constitution with constitutionalism will reflect human rights, the rule of law, and legal pluralism principles in land administration. Incorporating these three components into constitutions is expected to aid in addressing land administration problems in peri-urban areas. Drawing

from the case study analysis of the three peri-urban areas and the secondary data (see sections 2.2, 2.3 and 2.5 which discuss legal pluralism, human rights, and the rule of law respectively), a conceptual framework for assessing LASs with their legal frameworks was developed (Figure 8-2). In this framework human rights, the rule of law, and legal pluralism are linked to the Constitution. It hoped that land policy and land law should flow from the Constitution.

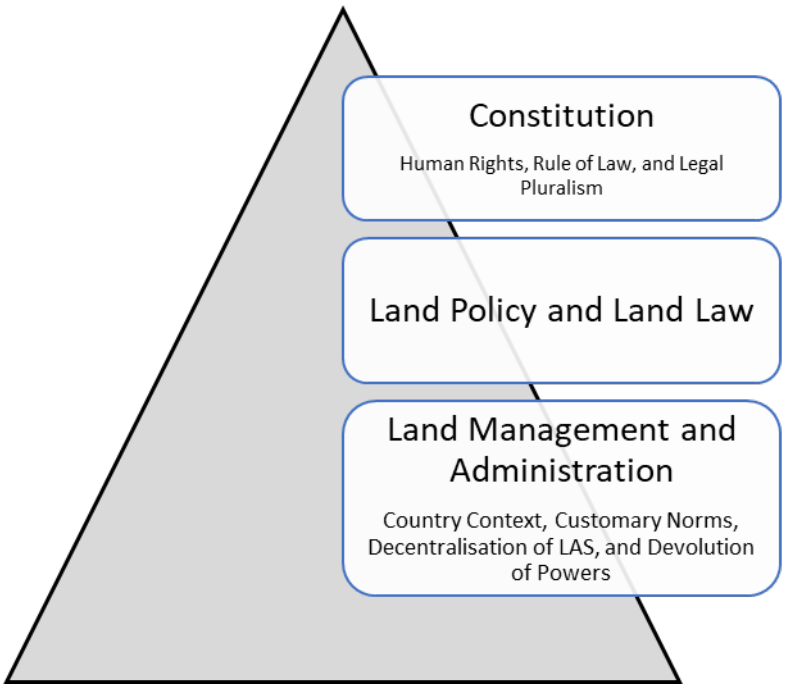

Figure 8-2. Framework for Assessing Land Administration Systems and their Legal Framework (Adapted from Babalola *et al.*, 2022)

In Table 8-9, the potential indicators of how legal pluralism in LAS should be addressed in the Constitution are presented. The potential indicators are used to assess if legal pluralism is either deep or weak in LAS. The aspect of the legal pluralism potential indicators primarily relates to jurisdiction, legitimacy, and collaboration. Hence a legal pluralism model is developed. The legal pluralism model shapes jurisdiction, legitimacy, and collaboration as three pillars of measuring strong and weak tenure security (Figure 8-3). However, a new continuum of land rights model (NCLRM) indicating strong and weak tenures security is already proposed by Whittal (2014) using three pillars of legitimacy, legality, and certainty as indicators of land tenure security. This study's legal pluralism model recognises this existing land tenure security model and builds on it without discarding the old. Differences

Table 8-9. Updated Elements of the Constitution to Address Human Rights, the Rule of Law, and Legal Pluralism (Adapted from Babalola *et al.* 2022)

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 LA.
Rule of law	The clarity in the law, availability in a local language, enactment through democratic procedures, substantive demand (civil and political rights, justice, and social welfare).
Legal pluralism in LAS	Accommodation of social rules, protection of social tenures, the exclusive power to customary institutions, recognition of customary law in land administration, local dispute mechanisms and social justice, devolution of powers, self-determination, inclusion in customary court and the CCAS, collaboration between customary and statutory institutions, recognition of pro-poor approaches to respecting, recording, and recognising land rights, recognition of traditional institution in land administration, recognition of the NSJS, legitimacy and jurisdiction of customary court and the CCAS.

exist between the two models. Firstly, in the NCLRM a vertical and horizontal axis was used to link the indicators of legitimacy, legality, and certainty with the different land rights found in real life situations, while in this study the indicators of jurisdiction, legitimacy, and collaboration have only a horizontal relationship without a link to different land rights found in real life situations. Secondly, the NCLRM was used to understand multiple aspects of land value contributing to the value of land while the model in this study is used to understand legal pluralism in LASs.

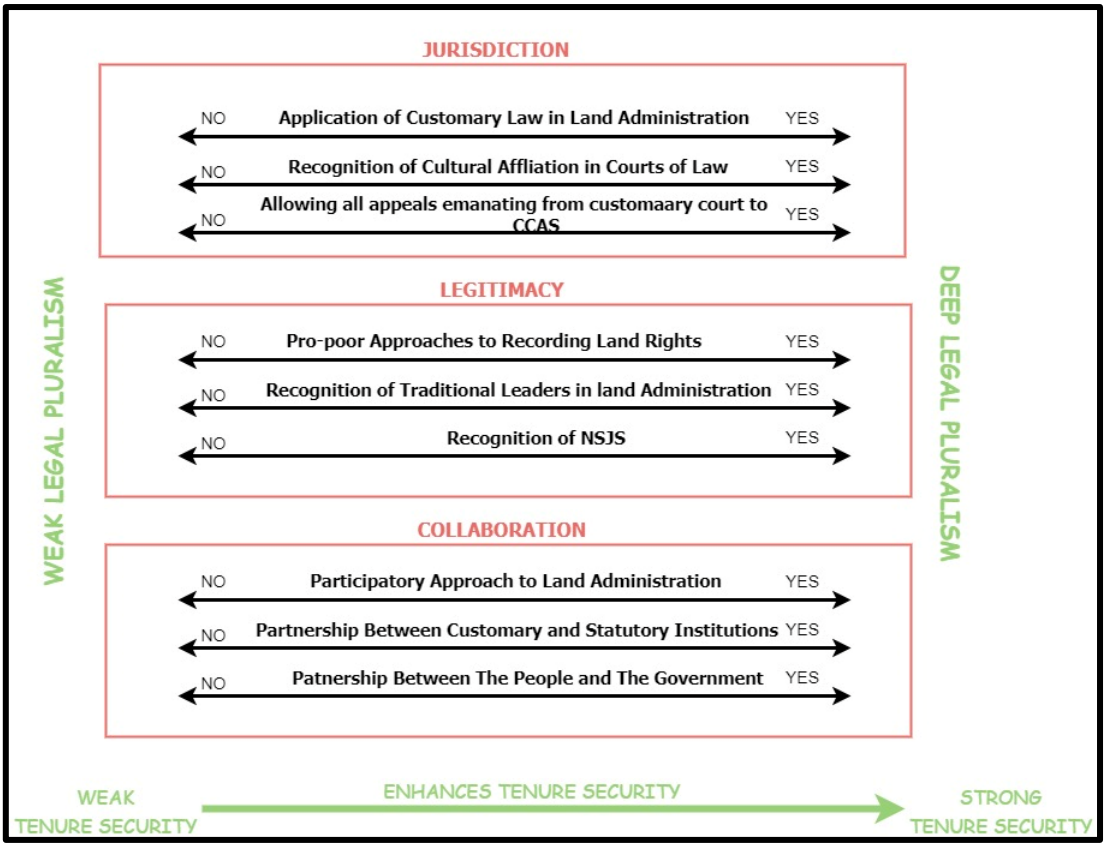

Figure 8-3. Legal Pluralism Model in Land Administration Systems

It is hoped that constitutional reform addressing legal pluralism in LAS may likely bring about LAS reform that will be successful, sustainable, and significant.

8.8.1 Jurisdiction

One of the uses of the legal pluralism model is understanding how customary and statutory law, tenure, and administration are carried out in peri-urban areas of Ekiti State, as well as improving land tenure security, especially for the poor, women, and the vulnerable. Reflecting on the analysis in this thesis, tenure security can be articulated in the intended model through the variables of the jurisdiction (allowing autonomy and self-determination), legitimacy (acknowledgement by the State), and collaboration (policy recognising participatory approach) - see Figure 8-3. Autonomy and self-determination in this context are allowing the geographical boundaries of traditional areas as well as boundaries/limits of powers of traditional leaders. Jurisdiction is the widespread acceptance of customary law, tenure, and administration as dominant in peri-urban areas (Figure 8-3). In terms of regulation, using customary law will strengthen the human-land

relationship in peri-urban areas. The dominance of the practice of customary tenure and administration will help improve the cultural affiliation in courts of law. The usual form of allowing jurisdiction to evolve is to enable all appeals in respect of land matters from the customary courts to go to the CCAS. These appeals should end in the same type of court and not have to end in statutory courts (see 6.3.5 and Nwauche, 2015). Figure 8-3 shows that respect for jurisdiction will result in tenure security while non-jurisdiction will result in tenure insecurity.

8.8.2 Legitimacy

Legitimacy has implied the acceptance of pro-poor approaches to land administration, recognition of a traditional form of land governance, and dispute resolution. In terms of customary tenure and administration, recognition strengthens legitimacy. Strengthening legitimacy usually takes the form of allowing pro-poor land tools used in recording land rights, recognition of traditional leaders in land administration, and allowing autonomy of the NSJS. In Nigeria, the aspects of jurisdiction versus legitimacy were compared in the post-colonial land policy. Where customary law is recognised within statute law, its legality is enhanced, which at the same time enhances legitimacy, but that legitimacy goes much further than recognition in statute law. The contest between jurisdiction and legitimacy is equally evident in the issue of legal pluralism claims. These duos are vital indicators of legal pluralism that should be discussed objectively.

Section 2.3.1 discusses the different forms of legal pluralism: combative, competitive, cooperative, and complementary (Swenson, 2018). Strategies to incorporate the NSJS were discussed in 2.3.2 as bridging, repression, subsidisation, harmonisation, and incorporation. All these were combined as a lens to analyse the field findings in this chapter. After examining these study findings, it is observed that the strategies of accommodating the NSJS and the different forms of legal pluralism tend to fall somewhere on a legal pluralism continuum, which is oriented towards the customary and statutory understanding of the

law, tenure, and administration in LAS. These are then proposed to lie on a theory continuum based on the approach of deep and weak legal pluralism. The different forms of legal pluralism and strategies of accommodating the NSJS are ordered per the continuum, as indicated in Figure 8-4.

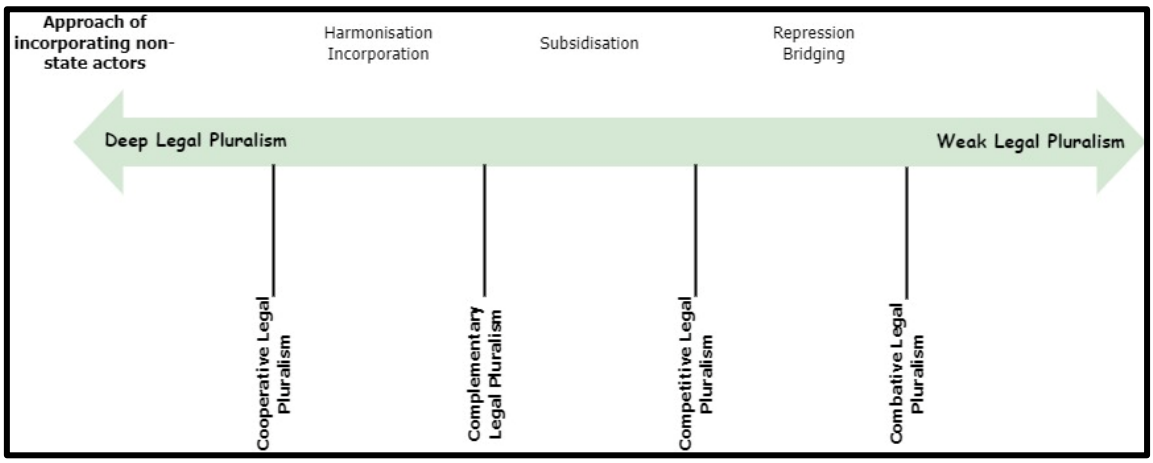

Figure 8-4. A Continuum of Understanding Legal Pluralism Theories and Practices

The prevailing law, tenure, and administration in land administration tend to reveal the type of legal pluralism. Complementary and cooperative approaches tend towards deep legal pluralism, mainly using harmonisation and incorporation as strategies to incorporate non-state actors. In contrast, competitive and combative approaches tend toward weak legal pluralism, which adopts repression and bridging approaches in recognising the non-state actors. The subsidisation strategies tend to work between complementary and competitive legal pluralism in the middle of the continuum. How weak legal pluralism is promoted determines the types of legal pluralism, with combative legal pluralism being the highest form of weak legal pluralism, followed by competitive legal pluralism (see Figure 8-4).

In this study the RLM indicators scoring 48% lie somewhere between competitive and complementary legal pluralism on this continuum which is indicative of subsidisation approach. whereas the other indicators scoring 75% are between cooperative and complementary legal pluralism which are on harmonisation and incorporation side.

Conversely, if law, tenure, and administration in peri-urban areas are primarily viewed from social constructs, the underlying legal pluralism will be cooperative, followed by complementary. Deep legal pluralism preserves indigenous land law, tenure, and administration (cultural-cognitive legitimacy), while weak legal pluralism promotes more centralised, formal rules and procedures (regulative legitimacy). The four types of legal pluralism used to depict this continuum are not representative of an exhaustive list of the forms of legal pluralism. Neither do they exist in isolation on the continuum; they sometimes overlap. For example, a complementary and competitive approach is appropriate in the land acquisition process.

8.8.3 Collaboration

Another measure of legal pluralism is collaboration. Collaboration is increased when a participatory approach to land administration is adopted or enhanced. A participatory approach is expected to reduce differential power and abuse of power and help develop an inclusive law for all. The collaboration will help encourage partnerships between the customary and statutory leaders and promote the association between the people and the government.

It is evident that the three primary measures of legal pluralism – jurisdiction, legitimacy, and collaboration - will help improve land tenure security in peri-urban areas of Ekiti State. To help improve tenure security, policymakers in LASs with their legal frameworks should endeavour to implement legal pluralism model as developed in this chapter. These three measures should always be treated independently of each other to provide meaning and usefulness.

8.9 Summary

In addressing objectives 3, 4, and 5, RLM criteria were used to classify weak and deep legal pluralism in LASs. Research question 3 asked to what extent customary and statutory institutions in peri-urban Ekiti State satisfy the RLM objectives. In section 8.3, the RLM

matrix was used to analyse LASs. Considering LAS's structure, process, and impact on peri-urban dwellers, every aspect of the process needs improvement, The metrics examined revealed that all facets of the structure require development, with only responsiveness being deemed adequate. Only robust is judged satisfactory for the process indicators but need improvement. The LAS's lack of impact on the people of peri-urban areas of Ekiti State shows a lack of significance for the people.

Research question 4 asks what version of legal pluralism is practised in the case study areas and what the indicators are of this form of legal pluralism in land administration. The research identifies both weak and deep legal pluralism in land administration. The non-application of customary law characterises weak legal pluralism in land administration, resulting in the suppression of customary tenure and administration. This results in a lack of collaboration between customary and statutory institutions in the land administration process. Major factors contributing to weak legal pluralism are customary courts and CCAS legitimacy and jurisdictional issues. On the other hand, deep legal pluralism in LAS exhibits traditional leaders administering land using customary law in peri-urban areas. In such places, a participatory approach to land administration, availability of a community dispute resolution committee, collaborations between the traditional leaders and community members, and the legitimacy and jurisdiction of the customary legal framework for land administration are effective.

The use of the FFPLA framework for the analysis shows a lack of flexibility in legal and institutional frameworks for LAS (see 8.6). There is a need for improvement to accommodate flexible frameworks designed for administrative purposes, recognition of several tenures on the continuum, pro-poor approaches to LAS, and ensuring gender equity on land and property rights. On the other hand, the institutional framework requires RLM, integrated institutions of land administration, and affordable LAS. These findings corroborate the previous results (Ameyaw *et al*. 2018; Williams-Wynn, 2021; Musinguzi *et*

al. 2021; Ho *et al.* 2021; Balas and Lemmen, 2021; Chigbu *et al*. 2021) about poor legal and institutional frameworks for land administration.

Research question 5 asked what conceptual tools emerged from the analysis of peri-urban land administration. A conceptual framework to assess LASs with their legal frameworks (Figure 8-2), a continuum of legal pluralism (Figure 8-4) and a legal pluralism model for peri-urban areas of Ekiti State were developed (Figure 8-3). The conceptual framework addresses human rights, the rule of law, and legal pluralism principles in land administration. Legal pluralism as an aspect of the framework was used as a lens in this study. Potential indicators emerged to indicate weak or deep legal pluralism in land administration. The different forms of legal pluralism, from the cooperative to the combative, were placed on a continuum. A legal pluralism model of three measures of jurisdiction, legitimacy, and collaboration was developed, which may inform initiatives to improve legal pluralism in land administration in peri-urban areas of Ekiti State and similar contexts.

9 Conclusion and Recommendations

9.1 Introduction

Central to the aim of this study is the development of a conceptual framework for enhancing legal pluralism in LASs that aids in improving tenure security in customary peri-urban areas. In Chapter 2, previous research in LASs and legal pluralism was discussed. In Chapter 3, the theoretical framework driving the research was presented. Chapter 4 details the techniques and methodology used in acquiring the data used in this study. The case study narrative was discussed in Chapters 5 and 6. The case study narrative exemplified the understanding of LASs with their legal framework. The customary land law in courts was analysed in Chapter 7 using the lens of legal pluralism and institutional isomorphism theory to ascertain the conflicting pressure from internal and external organisational fields. Conflicting pressure is asserted on customary courts to gain legitimacy between the two organisational fields (Section 6.3.5). In Chapter 8 peri-urban land administration in the case study areas is analysed to determine where on the scale from weak to deep legal pluralism lies.

At the beginning of this study, LASs with their legal framework in peri-urban areas were discussed. Legal pluralism in land administration was examined and assessed as weak or deep or lying somewhere between these two extremes. The resilience of customary land administration systems and tenure were discussed. Most LASs in the study area still support replacement theory over adaptation theory, wherein nationalisation of land in the hands of the government is advocated in the new land policy reform in SSA (sections 2.2.2 and 2.2.3). Based on the new LAS and land policy reform in SSA, decentralisation of land administration to peri-urban areas to allow LAS to be significant for land rights holders is advocated with this study contributing to research in this field (see García-Morán *et al*., 2021; Todorovski, Salazar and Jacome, 2021; Balas and Lemmen, 2021).

The main research question is: *How does a hybrid legal system affect LAS and tenure security of peri-urban dwellers in Southwest Nigeria?* To answer this question, the study analyses

relevant literature in LAS and legal pluralism, adopts an appropriate theoretical framework, and uses a case study research strategy to obtain empirical data. Using three peri-urban cases in Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti, the study addresses the knowledge gap in LASs with their legal frameworks reform by developing a conceptual framework to enhance legal pluralism in land administration in a legally plural environment.

Several sub-questions were derived from the main research question. The summary of findings and the challenges resulting from answering the research questions are presented here. In section 9.2, the research questions are answered, and overall conclusions are drawn. The study's relevance to ongoing research on LASs with their legal framework reform is presented in section 9.3. In section 9.4, the areas of future research are discussed.

9.2 Conclusion and Recommendations

The research questions addressed in this study are answered in the research process and are reflected in the following sections.

Table 9-1. Research objectives and associated questions (Revisited)

Objectives	Research Questions
1. To critically examine LAS and land law within a mixed legal framework in Ekiti State.	1. How is the legal framework for administering land in Ekiti State, Nigeria, constituted; what is the effect on tenure security and how does the existing legal framework support the LAS structure?
2. To determine the dynamics of legal pluralism using organisational-institutional perspectives in Ekiti State.	2. How are land disputes resolved in regular and customary courts; how customary is the customary court and CCAS; how is customary law applied in customary courts; and how are customary courts managed within a pluralistic environment?
3. To determine to what extent land management meets the	3. To what extent do customary and statutory institutions in peri-urban Ekiti

responsible land management (RLM) objectives in Ekiti State.	State satisfy the Responsible Land Management (RLM) objectives?
4. To determine the weakness and depth of legal pluralism in land administration in Ekiti State.	4. What is the version of legal pluralism practised in the case study area, and what are the indicators of these forms of legal pluralism in land administration?
5. To develop conceptual tools for assessing LASs with their legal frameworks as well as enhancing legal pluralism in peri-urban LASs.	5. What conceptual tools emerged from the analysis of peri-urban land administration?

The study aim is to **provide understanding of the influence of hybrid legal systems on LASs by developing conceptual tools to help improve tenure security in peri-urban land administration**. The first objective was to critically examine LAS and land law within a mixed legal framework in Ekiti State. In chapter 5, case study narratives of LASs with their legal framework in Ekiti State is presented which helped to achieve objective 1. Objective 2 was to determine the dynamics of legal pluralism using organisational-institutional perspectives in Ekiti State. In chapter 6, institutional isomorphism theory was used to analyse customary courts and CCAS. This chapter reflect the state of customary courts and CCAS within the Nigerian legal system. The chapter contribute to knowledge as the use of institutional isomorphism theory reflect a coercive and mimetic isomorphism displayed by customary courts and CCAS. Objective 3 was to determine to what extent land management meets the responsible land management (RLM) objectives in Ekiti State. In chapter 7, a case study narratives using SSM and 8R indicators of RLM was used to model the problem situation in LASs with their legal frameworks in Ekiti State. This chapter contribute to knowledge through their distinct description of the case study area through the lens of SSM and RLM. Objective 4 was to determine the weakness and depth of legal pluralism in land administration in Ekiti State. In chapter 8, the RLM and the FFPLA was used to analyse peri-urban land administration. The chapter shows the classification of weak and deep legal pluralism in LASs. This chapter further contribute to knowledge in terms of methodology as

the first study to use SSM, RLM, and FFPLA to assess LASs and their associated legal frameworks in Nigeria. The final objective was to develop conceptual tools for assessing LASs with their legal frameworks as well as enhancing legal pluralism in peri-urban LASs. This chapter develop a conceptual framework to assess LASs with their legal frameworks which is based on human rights, the rule of law, and legal pluralism. The chapter further develop a legal pluralism model to improve tenure security in peri-urban areas. A continuum of legal pluralism model is also developed. Objective 5 was satisfied by the development of conceptual tools to aid LASs with their legal frameworks which is the significant contribution to knowledge (see 1.10).

The research questions are addressed below.

9.2.1 Legal framework for land administration in Ekiti State, Nigeria

Research question 1 asks *How is the legal framework for administering land in Ekiti State, Nigeria, constituted, what is the effect on tenure security, and how does the existing legal framework support the LAS structure?*

In answering this research question, objective 1 seeks to critically examine LAS and land law within a mixed legal framework and this was achieved. As shown in sections 5.6.2 and 5.6.3, the description of LASs with their legal frameworks helps highlight the challenges of hierarchy and jurisdiction in land administration in which statutory institutional supremacy exists over customary institutions. This challenge needs to be addressed to strengthen the legally plural LAS. The description of LASs with their legal frameworks shows a broad institutional, organisational, and legal framework for land administration in which customary institutions are restricted in their involvement in land administration (see sections 5.5.3 and 5.7). Areas of restriction relate to revenue generation, registration, issuing a certificate of ownership, and local land management. Finally, the description of the legal framework for land administration is faced with the fragmentation of institutions, bureaucracy, slow processing of land documents, large-scale land acquisition of customary

peri-urban land, inconsistencies and contradictions of laws, and tenure insecurity (see sections 5.6.3.1 and 5.6.3.5).

Having many departments and regulations is linked to the high cost of land transactions and tenure insecurity. It is shown that there is ineffectiveness in land governance resulting in tenure insecurity. The tenure insecurity is caused by large-scale land acquisition. Most of these lands are not used because of implementation of a tedious process of obtaining title to land, payment of unofficial fees, the lack of a participatory approach in land administration, un-constituted LUAC and LAAC in Ekiti State, and political interference. In the provision of consent payments before title transfers, the statutory institution stepped into the shoes of the customary institutions. Several agricultural lands are rezoned to residential land, causing tenure insecurity for subsistence farmers.

The legal framework shows confusion in recognising the customary tenure in LUA (Babalola and Hull, 2019a) and a non-participatory approach in enacting the LUA. A colonial model of land administration is still adopted in the current land policy, which tends toward replacement theory instead of adaptation theory (see 5.6.1.3 and 5.6.1.4). Both colonial and post-colonial interventions still restrict the customary legal framework for land administration. The policy interventions adopt the *nationalisation* theory of land (see 5.4), thus limiting customary land management. The statutory institutions continue to be the major instrument used in administering customary land (see 5.6.3).

9.2.2 Customary courts

Research question 2 asks: *How are land disputes resolved in regular and customary courts; how customary is the customary court and CCAS; how is customary law applied in customary court; and how is customary court managed within a pluralistic environment?*

Research objective 2 seeks to determine the dynamics of legal pluralism using organisational-institutional perspectives - this was achieved. Land dispute proceedings and resolutions in customary and statutory courts are discussed in sections 6.2 and 6.3.1. The

analysis shows that the application of customary law is defective, resulting in 'judicial customary law' and 'lawyers' customary law' (see 6.3.5) because of customary court reliance on technical procedures. Statutory courts rely too much on technical aspect in their proceedings, which is not in the interest of providing tenure security for peri-urban dwellers (see 6.2.1, 6.2.2, 6.2.3, and 6.2.4). The reliance on legal technicalities is also extended to customary courts and the CCAS. The customary court does not reflect the attributes of customary courts since technical rules, inflexibility, and application of common law in court proceedings are identified (see 6.3.2, 6.3.3, and 6.3.4).

For the customary courts to maintain their legitimacy in both fields, they mimic the processes and principles of the Nigerian statute law organisational field. Incorporating norms from one field might risk their significance in the other. However, those actors with control, i.e., the lawyers involved, are schooled in the Nigerian statute law organisational field, registered for practice in that field, and progress in their careers within it. It is strategic for them to incorporate Nigerian statute law processes and principles within the customary court domain to increase their work's legitimacy and advance their professional practice. On the other hand, few hold power and influence to advocate for the customary court principles and processes to be followed.

Several factors contribute to the differences in customary law observed in the customary and statutory courts and the customary law practice in peri-urban areas. Legal, social, and political factors are critical to the differences in customary law observed in courts and practised in peri-urban areas. Legal aspects have caused a change in land tenure, living customary law, and the customary courts resulting in their distortions. These factors have immense effects on the LASs with their legal frameworks. The appeals from customary courts end in statutory courts. This adjudication process of subjecting customary land disputes to statutory court proceedings may negatively impact customary land management (see 6.3.5).

The organisational-institutional perspective was used to analyse the customary court of law processes (see 6.3 and 6.3.1). The institutional isomorphism theory was employed as a lens from the organisational-institutional perspective. The analysis showed that customary courts operate within two different organisational fields (see 6.3.5): firstly, an organisation field structured around Nigerian statute law and, secondly, an organisational field structured around customary law (Yoruba customary law). These courts operate within a plural, complex, and bifurcated institutional environment (see 6.3.5).

9.2.3 Alignment with responsible land management objectives

Research question 3 asks: *To what extent do customary and statutory institutions in peri-urban Ekiti State satisfy the responsible land management objectives?*

The research question was answered by achieving objective 3: to determine to what extent land management meets the responsible land management (RLM) objectives in Ekiti State. In section 8.3, the RLM matrix was used to analyse LAS. Considering LAS's structure, process, and impact on peri-urban dwellers, every aspect of the process needs improvement, with 'robust' and 'reflexive' indicators scoring poorly. For process, only 'resilient' indicator is considered satisfactory but need improvement. The LAS's lack of impact on the people of peri-urban areas of Ekiti State shows a lack of significance for the people. The customary and statutory institutions failed to meet the requirements of RLM. Table 8-5 shows that the indicators across the three stages of structure, process, and impact are poor and unsatisfactory, except for 'resilience' and 'responsiveness', which could improve.

9.2.4 Forms of legal pluralism

Research question 4 asks: *What is the version of legal pluralism practised in the case study area, and what are the indicators of these forms of legal pluralism in land administration?*

Objective 4 is to determine the weakness and deepness of legal pluralism in land administration. The research identified both weak and deep forms of legal pluralism in land administration (see Table 8-7). This results in a lack of collaboration between customary and statutory institutions in the land administration process. Major factors contributing to weak legal pluralism are the legitimacy and jurisdictional issues pertaining to customary courts and the CCAS. On the other hand, deep legal pluralism in LASs is revealed in that traditional leaders administer land using customary law in peri-urban areas. In such places, a participatory approach to land administration, availability of a community dispute resolution committee, collaborations between the traditional leaders and community members, and the legitimacy and jurisdiction of the customary legal framework for land administration are effective.

9.2.5 Frameworks that have emerged

Research question 5 ask: *What framework emerged from the analysis of peri-urban land administration?*

Objective 5 is to develop conceptual tools for assessing LASs with their legal frameworks as well as enhancing legal pluralism in LASs. From the peri-urban areas of Ekiti State, a continuum of legal pluralism and a legal pluralism model were created (see Figure 8-3 and Figure 8-4). Deep and weak legal pluralism can be found at either end of the continuum. The many types of legal pluralism, from cooperative to combative forms, fall in-between these extremes. A framework was created for evaluating LASs with their legal structure from a constitutional perspective. The conceptual framework discussed the ideas of legal pluralism, the rule of law, and human rights in land administration. Three indicators of jurisdiction, legitimacy, and collaboration were created as part of a legal pluralism paradigm (see Figure 8-3). A model for legal pluralism to enhance legal plurality in land management in peri-urban areas of Ekiti State was developed.

9.2.6 Appropriate theoretical frameworks

Research question 6 asks*: In assessing LASs with their legal frameworks, what theoretical frameworks are appropriate?*

From the literature reviewed on land administration and cadastral system research in Nigeria (see Section 2.6), it appears researchers are not too concerned about theoretical frameworks when researching LASs with their legal frameworks in SSA, particularly in Nigeria. An interpretivist and positivist philosophy of theoretical frameworks is suggested when researching LAS, usually converting customary land into individual ownership. This study emphasises the need to assess LASs with their legal frameworks, considering the customary and statutory law, tenure, and administration in peri-urban environments. Critical realism was found appropriate in this study in conjunction with institutional isomorphism theory, which helps to show pressure exerted on organisations by operating between two organisational fields (see 6.3.1). In LASs and their legal frameworks research, critical realism helps facilitate mixed method designs and mixed method approaches. In addition, critical realism is compatible with social system theory which allows for building case study narratives (see 7.3, 7.4, and 7.5). The RLM approach to analysis is also used, which supports critical realism.

9.2.7 Methods used

Research question 7 asks: *In the case of developing a conceptual framework for assessing LASs with their legal frameworks, what methods have been used, and to what extent in Nigeria, Africa and elsewhere, particularly as they pertain to peri-urban land administration?*

Several frameworks have been developed to assess the institutional and technical impacts of LASs on land rights holders. In developing these frameworks, the role and processes of customary law, tenure and administration are lacking in such societies.

No standard evaluation framework is yet to be developed for the distinct aspect of LASs with their legal frameworks. An appropriate legal framework with effective and efficient LASs is essential to ensure tenure security.

Recent debates on the resilience of customary land administration have inspired researchers and NGOs to develop a pro-poor approach to land administration in customary areas. It is believed that LASs can be adapted to the local level (see section 2.2.2). Also included in these debates is legal pluralism in land administration. It is asserted that for legal pluralism in land administration, land administration activities must be decentralised to rural and peri-urban areas. However, much is yet to be investigated on institutional and legal pluralism and RLM as necessary in implementing decentralised LASs.

For decades, the World Bank and FAO have had LASs and legal reform on their agenda. However, their approaches were found lacking in their assessment of the local context (Zevenbergen, *et al*. 2013). The situation led to inadequate reform interventions (*ibid*.).

Several studies developed conceptual framework for assessing LASs without the legal frameworks included (Arko-Adjei, 2006; Nkwae, 2006; Burns and Dalrymple, 2008; Akingbade, *et al*. 2012; 2014; Hull and Whittal, 2019; Nelson 2019). These studies adopts case study methodology in developing their conceptual framework. In Nigeria, case study methodology was used. For instance, Akingbade *et al*. (2012) developed an evaluative framework for the role of e-land administration using a case study of the Federal Capital Territory of Nigeria. In addition, Nelson (2019) proposed a structural framework for land administration decentralisation in Nigeria.

Modelling peri-urban land problems Nkwae (2006) used a case study methodology by testing soft systems based conceptual framework to peri-urban situation of Botswana and comparisons made to Malawi and South Africa. To guide cadastral system development, Hull and Whittal (2019) designed a conceptual framework. The three goals of success, sustainability and significance are crucial to developing the cadastral system, which is

centred on human rights, pro-poor policies, and good governance. The cadastral system development in customary land contexts is guided by the triple components of the so-called 3S (success, sustainability, and significance) framework.

9.2.8 Appropriateness of an analytical systems approach

Research question 8 asks: *Is an analytical systems approach to developing a case study narrative appropriate to address the research questions? Has this been done in Nigeria or elsewhere?*

The systems theory approach was found suitable for developing case study narratives for understanding the state of LASs with their legal frameworks in Nigeria (see 3.3). In section 3.3.2, a soft systems thinking approach was considered appropriate in researching LASs and legal pluralism (see also 4.5). An in-depth understanding of LASs with their legal frameworks is necessary because of the complexity of peri-urban land administration. Using a systems theory approach to understand the case study narratives provides for integrating the natural and social systems rather than analysing each aspect of the system separately.

In investigating LASs with legal frameworks, there is no evidence in the literature that a systems theory approach had been used in Nigeria. However, several researchers used the systems theory approach in their LAS research as described in section 2.6.

9.2.9 Appropriateness of systems tools

Research question 9 asks: *Are systems tools appropriate to model the problem situation and develop case study narratives of LASs with their legal frameworks? Has this been done before? How were they done, and what is the effect? Are there any other systems tools that may be suitable?*

SSM was deemed appropriate for this study because it aided in the understanding of complex LASs situations and their legal frameworks (see 3.3.3 and 4.5.3) Additionally, it assisted in the diagnosis of complex and poorly structured issues (Checkland, 1999). In

Nigeria, LASs and the related legal system are convoluted and poorly organized (Ukaejiofo 2008). To provide a thorough understanding of the current LASs with their legal frameworks, SSM was combined with RLM and FFPLA. Cultural and logic-based stream of analysis form the two stream model of SSM, which was used to develop case study narratives of the current LASs with their legal frameworks. This was helpful to provide an in-depth understanding of the problem situation (see 7.4). The MHUD and BLS were understood using the two streams of analysis (see 7.5 and Figure 7-8). Figure 7-6 provides the cultural stream of analysis, while Figure 7-7 provides the conceptual model for legal, organisational, social, economic, political, and technical systems.

Although SSM has been used by cadastral and land administration researchers (Nkwae, 2006; Whittal, 2008; Mabesa, 2011; Akrofi, 2013; see section 2.6), it does not appear to have been used in Nigeria or to develop case study narratives of a problem situation. Mabesa (2011) used SSM to investigate Land Surveys and Physical Planning; and Land Administration Authority in Lesotho. In her analysis an in-depth understanding of these systems in the context of Lesotho was developed. Her findings revealed that both systems are inefficient and ineffective to deliver a significant and sustainable LASs that can improve the livelihood of the people of Lesotho. On the other hand, Akrofi (2013) created a model for evaluating the functionality of peri-urban customary systems using SSM. His research showed that effective customary systems uphold the fundamentals of good governance in the administration of customary land.

A viable systems modelling is also applicable to model organisation's structure, processes, relationships and organisational reform but limited in its ability to reflect power and politics. It is also limited in its inability to model cultural, social and personal aspects in organisation systems (Whittal, 2008; Mabesa, 2011).

9.2.10 Recommendations

- The failure of the formal land administration to accommodate the several land tenure types found in real-life situations excludes the majority of peri-urban dwellers from formal land tenure through lack of use of the land registry. Hence this study recommends adopting the principles of the FFP approach to land administration and RLM as constitutional principles for developing a pro-poor land policy that will enable *significant* and *sustainable* LASs. When driven by constitutional provisions, LASs are likely to be significant and sustainable.

- The design of LASs in Ekiti State lacks public participation which is most important in pro-poor approaches. The use of SSM in the conceptual modelling of the MHUD and BLS in Ekiti State revealed that several systems are weak (see section 7.4). Hence the study recommends that for the implementation of pro-poor LASs, the design of LASs should incorporate the planned improvement in these weak areas.

- A significant factor in the failure of land reform in Nigeria is the lack of collaborative governance between all the stakeholders in land administration. The recognition of local land management would allow for collaboration between customary and statutory institutions in land management. A major delay in providing land administration services in peri-urban areas is the adoption of *deconcentration* over *decentralisation*. This study recommends collaborative governance between customary and statutory institutions, decentralising land administration activities to the local level to allow equitable access to land information and registration services as well as advancing responsibleness in land management which requires formal recognition of local land management. Balas and Lemmen (2021) state that when implementing decentralisation of land administration activities, it is imperative to determine the 'tangible' and 'intangible' costs necessary to implement the decentralisation strategy.

- The use of replacement theory is the major constraint to a sustainable LASs. An adaptation theory approach where statutory laws, tenure, and administration are allowed to adapt to customary law, along with flexibility in the administration of land tenure, may have a positive impact on peri-urban dwellers. Hence, adaptation is recommended.

- The study recommends that traditional courts that are closer to the people and headed by traditional institutions should be part of the model of FFPLA to address the conflicting pressure experienced by customary courts and the CCAS. Decentralising the courts will make a dispute on the land resolution process 'fit-for-purpose' as well as "fit-for-people" (Ho *et al*., 2021: 14).

- Finally, for LASs that aims to enhance legal pluralism in LASs, policymakers should use the conceptual framework in this study as a basis for constitutional principles for enacting land policy. Furthermore, assessing LASs and their legal frameworks should include human rights, the rule of law, and legal pluralism.

9.3 Overall Conclusions

The main research question is: *How does a hybrid legal system affect LAS and tenure security of peri-urban dwellers in Southwest Nigeria?*

The study showed both deep and weak legal pluralism in land administration (see 8.4). The conceptual framework for enhancing legal pluralism in land administration and understanding LASs with their legal frameworks may help policymakers, stakeholders, and land administration experts design LASs that ensure local land management, decentralisation, autonomy, and self-determination.

The customary legal framework for land administration is suppressed by the statutory legal framework for land administration. The institutional and organisational framework for LASs disregards customary institutions, as discussed in Chapter 5. This relates to revenue

generation, registration, occupancy certificates, and local land management. Statutory institutions are fragmented, causing overlaps in land administration functions, bureaucracy, slow processing of land documents, large-scale land acquisition of peri-urban land, and inconsistencies and contradictions of laws. These situations in peri-urban areas cause tenure insecurity.

The use of SSM, RLM, and FFPLA shows a lack of a participatory approach in land administration and a weak legal and institutional framework. With the innovation introduced by FFPLA, country context-specific LASs can be developed to address tenure insecurity in land administration. Adopting FFPLA will promote all peri-urban areas to have a traditional court.

9.4 Areas of Future Research

This study has analysed the LASs with their legal frameworks and developed a conceptual framework to enhance legal pluralism and understand LASs with their legal frameworks. The frameworks developed are based on SSM, RLM, and FFPLA methodology which are flexible and inclusive for peri-urban areas. However, for every research study, there are certain limitations. Hence the following recommendations for future research are stated below.

Adopting RLM and FFP approaches for land administration in customary and statutory tenure and administration contexts is likely to enhance peri-urban land management. The 8R indicators of the RLM reveal weak land administration in Ekiti State. Likewise, an evaluation of the legal and institutional framework through the lens of the FFP approach to land administration reveals weaknesses. However, STDM was tested in Itaji-Ekiti, a rural community in Ekiti State. STDM was found to be a viable pro-poor land tool to record the range of existing land rights (Babalola and Hull, 2019b). Further research on how to improve responsiveness in land management and develop a model for the FFP approach to

land administration in Nigeria based on three pillars of human rights, the rule of law and legal pluralism is recommended.

The methodology used in these studies employed three peri-urban case studies from Ekiti State, Southwest Nigeria (Ikere-Ekiti, Ijero-Ekiti, and Oye-Ekiti). To strengthen the generalisability of this study, further research in other peri-urban areas in the Southwest part of Nigeria should be conducted, and comparison made. nonetheless, the study results are generalised to institutional isomorphism theory through a process of naturalised generalisation.

In enhancing legal pluralism in land administration, decentralisation of land administration activities is recommended. The approach of implementing a decentralisation strategy that will be context-specific needs further investigation. This is because conflicts between customary and statutory law, tenure, and administration will occur. After all, customary law is flexible, while statutory law is comparably more rigid. The rigidity in statute law reduces significance for peri-urban dwellers. Therefore, land administration operations in a plural environment are often challenging to manage.

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APPENDICES

Appendix 1: Interview with Customary Authorities

Information Sheet

This interview/questionnaire is part of my PhD research in the department of Architecture Planning and Geomatics, University of Cape Town, South Africa. My study is titled **Assessing the land administration systems and its legal frameworks for peri-urban land in Ekiti State, Nigeria**. This research examines the impact of mixed legal systems on land administration systems (LASs) and in post-colonial African states, using Ekiti State Nigeria as a case study.

The land administration system of Ekiti is selected for this study. The fieldwork includes observation of the process and structures of LASs at the three levels of state, local government, and customary administrations. Interviews will be conducted with the officials of land administration institutions at the state and local government and the customary level. The researcher will make a note during the interview and record the interview. You may refuse to let a recording be made of the interview. If you agree to a recording, this will only be used for accurate data collection and will be reviewed to add detail to written notes and to make corrections. The data acquired during this study will be used only for analysis, and confidentiality will be maintained.

The researcher is not offering any remunerations to the respondents for their participation. The study's results will contribute to my PhD study, which will be published. A copy of the interview summary will be provided to you if you so wish so that you can verify or refute any information or add to the information recorded.

This research is conducted regarding the University of Cape Town Ethics & Research Policy.

If you have any questions or complaints, feel free to contact the researcher directly on the email or the address below.

Thank you for being so supportive.

Kehinde Hassan Babalola

SA Address: 96 Newlands Avenue, Cape Town, South Africa

Nigeria Address: 1 Bunmi Ogunleye Street, State Housing Estate Oke-Ila Ado-Ekiti. Email: bblkeh001@myuct.ac.za or kasoh.babalola@gmail.com

Appendix 1: Consent form

1. I have read and had explained to me by…… the accompanying information sheet relating to the project on **Assessing the Land Administration System and its Legal Framework for peri-urban land in Ekiti State, Nigeria**.

2. I understand that I am not under any compulsion to answer any question, and I may decide to withdraw at any point during the interview.

3. I agree to have the interview recorded / I do not want the interview to be recorded (circle your response).

4. This project has been reviewed by the University of Cape Town Ethics & Research Committee and given a favourable ethical opinion for conduct.

5. I have received a copy of this Consent Form and the accompanying information sheet.

Name: ……..

Signed: ……..

Date: ……..

Appendix 1: PRIMARY DATA COLLECTION: KEHINDE HASSAN BABALOLA PHD GEOMATICS THESIS STUDY

Assessing Land Administration Systems and its Legal Frameworks for Peri-Urban Land in Ekiti State, Nigeria.

This research seeks to investigate and provide a detailed study of the impact of dual legal systems on land administration systems in peri-urban areas of Ekiti State. This interview/questionnaire is part of my PhD research in the department of Architecture Planning and Geomatics, University of Cape Town, South Africa. My study is titled **Assessing Land Administration Systems and its Legal Frameworks for Peri-Urban Land in Ekiti State, Nigeria**. This research examines the impact of mixed legal systems on land administration systems (LASs) and in post-colonial African states, using Ekiti State, Nigeria as a case study. This will be used to represent the state of the dual legal system and land administration system.

Header to all Primary Data Collection Files:

Case: Ekiti State (Nigeria)

Date:

Time:

Place:

Interviewee:

Position:

Interviewer:

Translator:

Language:

Ethics approval:

Audio record: N/Y

Participant gave permission to use his/her name: N/Y

Participant wishes to remain anonymous: N/Y

Participant wishes to remain anonymous, but with a pseudonym: N/Y

Pseudonym: N/Y

Participant gives permission to be quoted and identified: N/Y

Photograph approval & understood: N/Y

Photograph of interviewee: N/Y

General information to be conveyed to all interviewees:

- All information is controlled in terms of the ethics policy of the University of Cape Town
- No information will be published which will lead to your harm (anonymity)
- All information is used for research purposes, and the interviewer is a student or collaborator with the University of Cape Town (not the government)
- You may refuse to answer any question and may also withdraw any information provided at any stage (provide contact details)
- You may refuse to let a recording be made of the interview. If you agree to a recording, this will only be used for accurate data collection and will be reviewed to add detail to written notes and to make corrections.
- Communicate the purpose of the study and its relevance to the participant – why they should be involved
- Key Informant Interviews only: A copy of the interview summary will be provided to you so that you can verify or refute any information or add to the information recorded.
- This interview will take about 90 minutes.

Customary Administration/ Customary Legal Framework.

(Structured Interview)- Questions for local authorities (Oba/Chiefs/Elders)

General information

a. Please, can you briefly introduce yourself? Name (optional), position in the town---
---
---

b. What is the name of your street in this town?----------

---

c. What is the customary system structure (e.g., head of family or chiefdoms)? ---------
---
---

d. What are the means of livelihood in this customary area?----------
---

Customary legal and institutional framework

- How do you apply customary laws in managing land? ----------
---

- Customary laws are known to be dynamic and responsive to changes in the local context. Using your experience, how have you managed such flexibility in land administration? How has the formal land administration system accommodated customary flexibility? ----------
---

- How are customary processes of LA applied, and what customary laws govern these elements?

  a. Land development (building plans, land use planning, and subdivisions)?---
  ---

  ---

  b. Land tenure security delivery? ----------

  ---

  c. Land use control?----------

  ---

  d. Land valuation and taxation? ----------

- What are the reasons why customary laws still exist? ----------
---

- What are the challenges of the integration of customary and statutory laws? How can it be improved? ----------
---

- How are customary laws used in land dispute cases? ----------
  ---

- What are the customary laws of inheritance? What procedures are followed in family inheritance? ----------
  ---

- How can you rate the statutory land registration process using a scale of 1 to 6, where 1 is poor, and 6 is excellent? 1--2--3--4--5--6

- Did you know of the existence of the Land Use Act? If yes, how does the Land Use Act help you to address land problems in this community? ----------
  ---

  --

- Did you know of the Land Allocation and Advisory Committee (LAAC) in this Local Government? If yes, using a scale of 1 to 6 where 1 is poor and 6 is the excellent rate of the committee's performance in respect to land administration 1--2--3--4--5--6

- Is there any Community-Based Dispute Resolution Committee? If yes, what is the composition of this committee? And what is the educational background of

the committee members? ----------

- Did they have any training in respect of African dispute resolution? ----------
---

- Have you witnessed any customary land dispute resolution process? If yes, can you explain the process? ----------
---

- What are the principles guiding the committee members during dispute resolution? And how long does it take to resolve a dispute? ----------
---

- Using a scale of 1 to 6, where 1 is poor, and 6 is the excellent rate, the process of customary dispute resolution 1--2--3--4--5—6 ----------
---

- How does applying customary law help improve the livelihood of rural people? ----------
  ----

- What measures have you put in place to clarify customary land delivery laws to community members? ----------
  ----

- Have you had any land claim matters and causes taken to customary court? If so, can you describe the process or proceedings? ----------
  ----

- If you are unsatisfied and decide to appeal the case, where do you appeal to? ---
  ----

- As a traditional head, do you consider your role important in establishing customary courts? If so, have you made your exclusion in the composition of the customary court known to the government? ----------
  ----

- What do you think, in your opinion, can be done to contribute to social justice? ----------
  ----

- When land is acquired by the government and issues of inadequate compensation arise, where do you take such cases? ----------
  ----

Structure and processes of land administration in customary areas

- How do you control land use in this community? ----------

- Who manages land in this community- Obas, traditional chiefs or local government? Can you explain the role of traditional institutions in land administration? ----------
  ----

- Do you have any map that depicts the community boundary? How are plots allocated within the community recorded? ----------
  ----

- Is the land use planning functioning well in this community? Rate on a scale of 1 to 6, where 1 is poor, and 6 is excellent ----------
---

- Has there been any case where people were evicted from their land in this community? ----------
---

- What links are customary structures and state/local government, and what land administration processes are undertaken collaboratively? ----------
---

- In your view, how is the border between customary and formal land administration depicted or identified? ----------
---

- What is the role of customary leaders in land management in customary areas? -----
---

- Do you have any role in statutory land management systems? ----------
---

- Are land users required to take permission from customary leaders before transferring their interest in land? ----------
  ----

- In managing customary and statutory processes, are there any land administration tools developed to aid in land management? ----------
  ----

- What links and processes are customary and statutory institutions concerning land administration? ----------
  ----

- How are community members engaged in the land administration process?

  - Who was engaged: individual/head of household/community authorities?--
    ----

  - Are all land rightsholders' needs addressed in the land administration process?----------
    ----

  - Is the participatory approach used in the LA process? ----------
    ----

  - Our Constitution affirms the establishment of a customary court; how are customary laws applied and considered? ----------
    ----

- The Constitution stipulates the composition of the customary courts, except for traditional authorities in this composition. Do you think this addresses the legitimacy, legality, and validity of the customary legal framework? -----
  ---

- Are all land rightsholders' needs addressed in the land administration process? Are women and men treated the same way in land administration processes? ----------
  ---

- Are married men and women co-owners of statutory and customary property? -----
  ---

- How is customary land transferred? Processes of sale? Processes of inheritance (do people have a will)? ----------
  ---

- How is land transferred in both customary and statutory areas? ----------
  ---

- What is the structure of traditional land administration and governance? ----------
  ---

- How are members of the traditional land governance appointed? ----------
  ---

- How are men and women represented in the land governance structure? ----------
  ----

- What is the level of collaboration of traditional land governance with the following institutions?

  - Ministry of Land and Housing and Urban Development ----------
    ----

  - Ministry of Environment ----------

  - Office of Surveyor-General ----------

  - Housing corporations ----------

  - Urban and regional planning ----------

- What are the roles of the community members in the following?

  - Appointment and selection of community leaders ----------
    ----

  - Decision making ----------

- Dispute resolution ----------

- Land allocation ----------

- Are there disciplinary procedures for erring traditional chiefs in the community regarding land management? Are there checks and balances on chiefs in the community? ----------
---

- Is there any regulation on equity, social security, and consensus-building in land administration? ----------
---

- Do natives and non-natives pay for the land? ----------

  - What evidence do you give for a land transaction? ----------
---

  - Are land transactions documented so that records or accounts can be accessed? ----------
---

  - Do you make information about land transactions available for community members? If yes, can you briefly explain how and through which medium? -

---

- How do your account for stewardship to your community members? --------

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Appendix 2: Interview with Statutory Institutions

Information Sheet

This interview/questionnaire is part of my PhD research in the department of Architecture Planning and Geomatics, University of Cape Town, South Africa. My study is titled **Assessing Land Administration System and its Legal Framework for peri-urban land in Ekiti State, Nigeria*., Nigeria.*** This research examines the impact of mixed legal systems on land administration systems (LAS) and in post-colonial African states, using Ekiti State Nigeria as a case study.

The land administration system of Ekiti is selected for this study. The fieldwork includes observation of the process and structures of LASs at the three levels of state, local government, and customary administrations. Interviews will be conducted with the officials of land administration institutions at the state and local government and the customary level. The researcher will make a note during the interview and record the interview. You may refuse to let a recording be made of the interview. If you agree to a recording, this will only be used for accurate data collection and will be reviewed to add detail to written notes and to make corrections. The data acquired during this study will be used only, and confidentiality will be maintained.

The researcher is not offering any remunerations to the respondents for their participation. The study's results will contribute to my PhD study, which will be published. A copy of the interview summary will be provided to you if you so wish so that you can verify or refute any information or add to the information recorded.

This research is conducted regarding the University of Cape Town Ethics & research policy.

If you have any questions or complaints, feel free to contact the researcher directly on the email or the address below.

Thank you for being so supportive.

Kehinde Hassan Babalola

SA Address: 96 Newlands Avenue, Cape Town, South Africa

Nigeria Address: 1 Bunmi Ogunleye Street, State Housing Estate Oke-Ila Ado-Ekiti. Email: bblkeh001@myuct.ac.za or kasoh.babalola@gmail.com

Appendix 2: PRIMARY DATA COLLECTION: KEHINDE HASSAN BABALOLA PHD GEOMATICS THESIS STUDY

Assessing Land Administration System and Its Legal Framework for Peri-Urban Land in Ekiti State, Nigeria.

This research seeks to investigate and provide a detailed study of the impact of dual legal systems on land administration systems in peri-urban areas of Ekiti State. This interview/questionnaire is part of my PhD research in the Department of Architecture Planning and Geomatics, University of Cape Town, South Africa. My study is titled the **Assessing Land Administration Systems and its Legal Frameworks for Peri-Urban Land in Ekiti State, Nigeria**. This research examines the impact of mixed legal systems on land administration systems (LASs) and in post-colonial African states, using Ekiti State Nigeria as a case study. This will be used to represent the state of the dual legal system and land administration system.

Header to all Primary Data Collection Files:

Case: Ekiti State (Nigeria)

Date:

Time:

Place:

Interviewee:

Position:

Interviewer:

Translator:

Language:

Ethics Approval:

Audio record: N/Y

Participant gave permission to use his/her name: N/Y

Participant wishes to remain anonymous: N/Y

Participant wishes to remain anonymous, but with a pseudonym: N/Y

Pseudonym: N/Y

Participant gives permission to be quoted and identified: N/Y

Photograph approval & understood: N/Y

Photograph of interviewee: N/Y

General information to be conveyed to all interviewees:

- All information is controlled in terms of the ethics policy of the University of Cape Town
- No information will be published which will lead to your harm (anonymity)
- All information is used for research purposes, and the interviewer is a student or collaborator with the University of Cape Town (not the government)
- You may refuse to answer any question and may also withdraw any information provided at any stage (provide contact details)
- You may refuse to let a recording be made of the interview. If you agree to a recording, this will only be used for accurate data collection and will be reviewed to add detail to written notes and to make corrections.
- Communicate the purpose of the study and its relevance to the participant – why they should be involved
- Key Informant Interviews only: A copy of the interview summary will be provided to you so that you can verify or refute any information or add to the information recorded.
- This interview will take about 90 minutes.

Statutory Administration and Statutory Legal Framework (state and local government administration)

General information

a. What is the name of your institution, the department you belong to, and the role of your institution in LAS?----------

b. What are the aims and objectives of your institution? ----------

c. What is your responsibility like in this institution? i.e., your office work?----------

d. Please describe how the LAS has delivered efficient and effective services to the people in this state using one or two cases as an example?----------

e. How has the success of the LAS been measured? ----------

f. Is there any organogram? If yes, can it be made available?----------

Statutory legal and institutional framework

- What is the correct interpretation of Section (1) of the LUA concerning recognising the customary land tenure system? ----------

- Do you consider that there are inconsistencies and contradictions in the provisions of the Land Use Act of 1978? If yes what sections?----------

---

- Do you accept that customary land laws are not recognised by the statutory legal framework for the land administration system? If yes, can you explain one or two such customary land laws ----------
---

- What needs of the LAS are being addressed by statutory legal framework?----------
---

- How has the Land Use Act of 1978 influenced the LAS? And how are the needs of the LAS achieved with LUA and the proposed land tenure reform? ----------
---

- Has the availability of new technology, such as satellite surveys, influenced policy formulation regarding land administration? i.e. Are innovative ways of recording land rights recognised by statutory legal framework? If yes ----------
---

Kindly describe the innovative ways and how they are being used.----------
---

Have donors influenced the land administration system in the state?----------
---

How are land administration experts trained to use the new technology? ----------
---

- How is a boundary dispute resolved in the state and local government? ----------
  ---

- In proving land ownership is oral evidence accepted as documentary evidence? What evidence is tenable to establish land rights? ----------
  ---

- Is the customary system of conflict management recognised by statutory institutions? ----------
  ---

- Is the non-state justice system (NSJS) recognised as legitimate as the state justice system? ----------
  ---

- Are women's land rights protected under statutory laws and institutions? ----------
  ---

- Are laws governing land readily available to the citizens? If yes, in what ways are these laws disseminated?----------
  ---

- Are indigenous laws recognised as the same as statutory laws in land administration? ----------

---

- How are social rules and customs accommodated by the statutory institutions as rules of ownership and land use? ----------
---

Structure and processes of land administration

- What rights do people have in land, and what form are they? ----------
---

- Is land allocated to members of the state and local government? ----------
---

- What forms of land rights exist in the state and local government? ----------
---

- How is land acquired in the customary land tenure system? ----------
---

- What is the process through which land acquisition in the state and local government areas takes place? ----------
---

- What is the role of the state and local government institutions in land acquisition? -
---

- Did you contact traditional authorities before such land acquisition? If yes, can you explain the procedures taken? ----------
---

- How are people compensated when their land is acquired for public purposes? -----
---

- When they are unsatisfied with the amount of compensation paid, what is the avenue provided to lay such complaints? ----------
---

- Are you collaborating with customary institutions in land administration in rural areas? ----------
---

- What is the process of evicting people considered to be occupying land belonging to the government, and how does this land become government land? ----------
---

- Are you aware of any tension or friction between customary and statutory laws in land administration? If yes, what are such instances? ----------

---

- How do the state and local governments make land accessible for subsistence farming?----------
---

- Are there any land conflicts in this state and local government? E.g., conflict between towns, farmers /herders, or local governments. Is there any boundary dispute between communities in the state and local government? ----------
---

- If yes, how are these disputes resolved, and who is responsible for such? ----------
---

- Is there any land/housing scheme by which people can access land in this local government? If yes, how is it acquired? ----------
---

- If the land is acquired through this scheme, what tenure type is that? ----------
  ---

- Do men and women have equal rights to land in this lLocal government? ----------
  ---

- In accessing land in the state and local government, are there any forms of corruption? ----------
  ---

- Are there any informal settlements in the state and local government? If yes, how did they derive their ownership? ----------
  ---

- Is there any committee in charge of land administration in this state? If yes, what is the committee name and are they functioning?----------
  ---

- Are guidelines available to hold public officials, agencies, and non-state actors accountable to the public? ----------
  ---

- Do you have any question/s or comment/s, or if you would like to provide any other information that might be useful to me, please do. ----------
  ---

Appendix 3: Interview with Land Rights Holders

Consent form

1. I have read and had explained to me by…… the accompanying information sheet relating to the project on the interactions of customary and statutory institutions and laws: The Land Administration System process: A case study of Ekiti State, Nigeria.

2. I understand that I am not under any compulsion to answer any question, and I may decide to withdraw at any point during the interview.

3. I agree to have the interview recorded / I do not want the interview to be recorded (circle your response).

4. This project has been reviewed by the University of Cape Town Ethics & Research Committee and given a favourable ethical opinion for conduct.

5. I have received a copy of this Consent Form and the accompanying information sheet.

Name: ……..

Signed: ……....

Date: ……..

Appendix 3: PRIMARY DATA COLLECTION: KEHINDE HASSAN BABALOLA PHD GEOMATICS THESIS STUDY

Assessing Land Administration Systems and its Legal Frameworks for peri-urban land in Ekiti State, Nigeria

This research seeks to investigate and provide a detailed study of the impact of dual legal systems on land administration systems in peri-urban areas of Ekiti State. This interview/questionnaire is part of my PhD research in the Department of Architecture Planning and Geomatics, University of Cape Town, South Africa. My study is titled **Assessing Land Administration Systems and its Legal Frameworks for peri-urban land in Ekiti State, Nigeria**. This research examines the impact of mixed legal systems on land administration systems (LASs) and in post-colonial African states, using Ekiti State Nigeria as a case study. This will be used to represent the state of the dual legal system and land administration system.

Header to all Primary Data Collection Files:

Case: Ekiti State (Nigeria)

Date:

Time:

Place:

Interviewee:

Position:

Interviewer:

Translator:

Language:

Ethics Approval:

Audio record: N/Y

Participant gave permission to use his/her name: N/Y

Participant wishes to remain anonymous: N/Y

Participant wishes to remain anonymous, but with a pseudonym: N/Y

Pseudonym: N/Y

Participant gives permission to be quoted and identified: N/Y

Photograph approval & understood: N/Y

Photograph of interviewee: N/Y

General information to be conveyed to all interviewees:

- All information is controlled in terms of the ethics policy of the University of Cape Town
- No information will be published which will lead to your harm (anonymity)
- All information is used for research purposes, and the interviewer is a student or collaborator with the University of Cape Town (not the government)
- You may refuse to answer any question and may also withdraw any information provided at any stage (provide contact details)
- You may refuse to let a recording be made of the interview. If you agree to a recording, this will only be used for accurate data collection and will be reviewed to add detail to written notes and to make corrections.
- Communicate the purpose of the study and relevance to the participant – why they should be involved.
- Key Informant Interviews only: A copy of the interview summary will be provided to you so that you can verify or refute any information and add it to the information recorded.
- This interview will take about 90 minutes.

Land Rights Holder

General Information

- Are you a native of this community? If not, how did you become a resident of the community? And how long have you been in this community?----------
  ----

- What are your means of livelihood in this community?----------
  ----

- How did you acquire this property/land? E.g., inheritance, government allocation, gift, purchase, and others?----------
  ----

- Do you have any title to this land? If yes, what rights did you have and for how long? If not, why and for how long have you been staying here?----------
  ----

Other questions

- Is your boundary demarcated? If yes, by whom? (Surveyor, government, or traditional authorities) ----------
  ----

- Have you ever been evicted from your land in this community? If yes, when, and how did you solve it? ----------
  ----

- In accessing land in this community, are women and men treated in the same way?-
  ----

- In your view, the government relates well with customary leaders on land matters. (E.g. Obas and Chiefs).----------

---

- Is any interaction between the people and the customary institution on land matters?

- Is there any interaction between the people and the government on land matters? -

---

- Customary laws are known to be dynamic and responsive to changes in the local context. Have any allowances been made for such flexibility in land administration?-

---

- Is there any community-based dispute resolution committee? ----------

---

-

- How are local norms, knowledge, and customs accommodated? ----------

---

- Do traditional authorities have the institutional capacity to administer land using customary laws?----------

---

- Are you engaged in the land administration process in this community? ----------

---

- Are women's land rights protected under statutory laws and institutions?

- Are people compensated when their land is acquired for public purposes?
- How do you rate statutory land registration processes using a scale of 1 to 6, where 1 is poor, and 6 is excellent? 1--2--3--4--5—6
- Is land use planning functioning well in this community?
- Are your land administration needs addressed in this community? E.g., Tenure security----------
  ----
- Our Constitution affirms the establishment of the customary court. Have you taken your land matters to a customary court? If yes, were indigenous laws applied in the court? ----------
  ----

- Do you consider the establishment of the customary court as a replacement for the traditional court? If so, is the customary court addressing land matters the way traditional courts would have done it? ----------
  ----

- The Constitution stipulates the composition of the customary court; how do you think the exception of traditional authorities affects the legitimacy of the customary legal framework? ----------
  ----

- Have you had an issue on land that requires it to be taken to customary court? If so, do you need legal representation in customary court? ----------
  ----

- In your opinion, do you think the customary court reflects the indigenous ways of settling disputes on land? ----------
  ----

- Have you ever been evicted on your land indiscriminately without resorting to due process? If yes, what law is violated in this regard?----------
---

- Is the customary system of conflict management recognised by statutory institutions?
- Do you accept that customary land laws are not recognised in the land administration system?

Do you have any questions or comments for us?