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LAND TENURE LAW AND SUSTAINABLE ECONOMIC DEVELOPMENT: THE NIGERIAN EXPERIENCE

Dr. Solomon O. Afolabi* &
Oluwabusayo T. Wuraola**

ABSTRACT

Development will not be sustainable without the effective management of land system in Nigeria. Except efforts are made by the government to mainstream sustainability into national planning and policies for development, sustainable economic development would not be achievable. This paper reflects on the Land Tenure System in Nigeria before the advent of the Land Use Act to determine whether or not the land tenure laws at their various stages of operation in Nigeria have been able to sustain the required development. In view of this, the paper discusses the various Land Tenure Laws in Nigeria predating 1900 up to the promulgation of the Land Use Act 1978 and examines whether their provisions and the various land tenure system evolved have been able to sustain economic and social development in the country.

1. INTRODUCTION

The importance of land to man cannot be overemphasized. Land is one of the basic essentials for human survival. In religious parlance, it is widely believed that man was made out of land. He is part of land and after death, he will return to the land. The Holy Bible confirms that, *for out of it (ground) you were taken for dust you are, And to dust you shall return.*¹ At common Law, land covers the earth surface, the top soil, the subsoil and things attached to the land. This includes structures, crops and other incorporeal hereditament enjoyed on the land.² Another definition of land similar to the Common Law definition is that contained in the Property and Conveyancing Law, which defines land to include the earth surface and everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal

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¹ Genesis 3:19. *The Holy Bible, New King James Version*, copyright (1994) Thomas Nelson, Inc.

² I. O. Smith. *Practical Approach to Law of Real Property in Nigeria*, (Sambak Graphic Reproductions Ltd. 1990), p.5.

rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another.³

In other words, land includes the earth surface, other subjacent things of a physical nature, everything attached to the earth surface and incorporeal rights. Land is defined by the Black's Law Dictionary,⁴ as "an immovable and indestructible three-dimensional area consisting of a portion of earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it".⁵ Nikki Tobi,⁶ amplified the main features of land as follows:

Land is generally defined to include not only the surface of the earth and the subsoil but also all appurtenances permanently attached to land. These include: buildings, trees, streams, ponds.⁷

Olawoye⁸ asserts and rightly too, that things placed on land whether made of product of the soil or not constitute land. According to Burn,⁹ the word 'land' includes "the surface of the earth together with all the subjacent and superjacent things of a physical nature such as buildings, trees and minerals". Utuama¹⁰ also defined land as "the earth surface, subsoil, the airspace above it, as well as things permanently attached to it". The Nigerian Supreme Court in *Salami v. Gbodolu*¹¹ held land to mean "any ground, soil or earth on the solid part of the earth's surface as distinguished from the sea". All these definitions highlight one of the most important elements of land, which is represented in the Latin Maxim *Quic Quid Platanur Solo Cedit* meaning, "whatever is affixed to the soil belongs to the soil". Unfortunately, this maxim is not found in Nigerian customary law. This is why an agreement for sale of land under customary law in Nigeria only affects the soil surface but not the economic trees on the land.¹² Also, section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 vests all minerals, mineral oil and natural gas in or upon any land in Nigeria or under or upon the territorial waters in the Federal Government of Nigeria;¹³ meaning that these mentioned

3. S.2 Property and Conveyancing Law Cap 100 Laws of Western Nigeria, 1959: Some states created out of the old Western Region of Nigeria now have their separate laws with similar provisions to this section of the 1959 Law.

4. Bryam, A.G, *Black's Law Dictionary* (5th ed.) Western Group, St. Paul Minn, London (1999), p.881.

5. *Ibid.*

6. Niki Tobi, *Cases and Materials on Nigerian Land Law*, Moabroch International co. Ltd, Lagos, (1997), p.8.

7. *Ibid.*

8. Olawoye C.O, *Title to Land in Nigeria*, Evans Brothers Ltd, Lagos (1974), p. 9.

9. Burn, E.H, *Cheshire Modern Law of Real Property*, 12th ed. Butterworths, London (1976), p. 136.

10. Utuama A.A, *Nigerian Law of Real Property*, Shaneson C.I Ltd Ibadan (1999), p. 4.

11. (1997) 4 NWLR [Pt. 499], at 277 (SC).

12. Umezuke, I.A., *ABC of Contemporary Land Law in Nigeria*, Snapp Publishers, Enugu (2013) p.5-18.

13. Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

appurtenances are not part of the definition of land in Nigeria. In fact, they cannot be owned by private individuals.

Land is the most fundamental resource in any community because both rural and urban populations depend on it to improve their economic status and sustenance. Indeed, the principal source of wealth (capital) in both agricultural and industrial development is land. Consequently, holders of land achieve economic power, which is also the basis of political power.

Thus, due to the importance of land, every society has developed legal and institutional mechanisms to resolve conflicts that may arise from the ownership, control and transfer of land. One of such institutions is the land tenure system. The form of land tenure system varies from one society or jurisdiction to another.

This paper examines whether or not the land tenure laws at their various stages of operation in Nigeria have been able to sustain the required development. The overall objective of the paper further discusses the various Land Tenure laws in Nigeria predating 1900 up to the promulgation of the Land Use Act 1978 and examine whether their provisions and the various land tenure system evolved have been able to sustain economic and social development in the country.

2. DEFINITION OF LAND TENURE

Land tenure is the system of rights and institutions that governs access to and use of land.¹⁴ It can be defined as "the terms and conditions under which land is held, used and transacted, and it is one of the principal factors that determine the way resources are managed and used and the manner in which benefits are distributed".¹⁵ In simple term, land tenure system determines who can use what resources for how long and under what conditions. Land tenure is an important part of social, political and economic structure. It is multi-dimensional bringing together social, economic, institutional, legal and political considerations, and it is enforceable in a formal court of law or through a customary structure.¹⁶

14 Adams M, *Tenure Security, Livelihoods and Sustainable Land Use in Southern Africa*, unpublished paper, presented at the conference on Land Region and Poverty Alleviation in southern Africa, convened by the Southern Africa Regional Poverty Network, Human Sciences Research Council, Pretoria (June 2001).

15 Adams M.K and White R. *Land Tenure Policy and Practice in Botswana; Governance Lessons for Southern Africa*, Austrian Journal of Development Studies, (2003) 19 (1), 55-74.

16 McDowell C.W, 'The Interpretation of Land Tenure Law of Northern Nigeria' (1970) 14(3) Journal of Africa Law 155-156.

A system of land tenure regime should be able to contribute positively to the growth of agricultural, agro-industrial and non-agricultural sectors of a country's economy while the ecological system in the land is preserved. Where this is possible, the tenure system is said to have achieved sustainable economic development.¹⁷

3. WHAT IS SUSTAINABLE DEVELOPMENT?

In evaluating whether or not the Nigerian land tenure laws have been able to achieve sustainable economic development, it is appropriate to understand the meaning of the term "Sustainable development". The term is defined as "development that meets the need of the present without compromising the ability of future generations to meet their own needs".¹⁸

Promoting sustainable development has become a consensus of the international community.¹⁹ One of the goals of sustainable development is to manage natural systems within their limits. In other words, when people make decisions about how to use the earth's resources such as forests, water, minerals, germs, wildfire and others, they must take into account not only how much of these resources they must use, what processes are required to get these resources and who has access to the resources. Other considerations are whether enough resources will be left for future generations and whether the environment will be adversely affected as to still support life in the same state it was before the resources were exploited.

James Buturo²⁰ gives another definition of sustainable development as "the ability of local people to continue development programmes even after external financial and organizational support has been withdrawn".²¹ Sustainable development is also defined as:

the organizing principle for meeting human development goals while at the same time sustaining the ability of natural systems to provide the natural resources and ecosystem services upon which the economy and

¹⁷ 'Access to Land and Tenure Security' <https://landportal.info/voclandvoc>>> accessed on 22 September 2017.

¹⁸ *The Brundtland Commission on Environment and Development Report, Our Common Future*. (Oxford University Press 1978) <<http://www.worldbank.org/dep.web/english/sdhtml>> accessed on 20 September 2017.

¹⁹ Zhang Y., 'Towards Sustainable Development; Chinese Environmental Law Enforcement Mechanism Research' <<http://www.tspace.library.utoronto.ca/bitstream/1807/1...>> accessed on 01 August 2017.

²⁰ James B. 'NGO's Democracy and Sustainable Development in Africa' <<http://www.unngls.org/orf/documents/publications/en/voices.africa/number5/vfa5.06.htm>> accessed on 19 September 2017.

²¹ *Ibid.*

society depend. The desirable end result is a state of society where living conditions and resource use continue to meet human needs without undermining the integrity and stability of the natural systems.²²

These definitions highlight the importance of improving the quality of human life while avoiding damage to ecological system and resources. Providing security of tenure is often seen as a precondition for intensifying agricultural production and is now increasingly stressed as a pre-requisite for better natural resource management and sustainable development. Rural people generally need both secure individual rights to farm plots and secure collective rights to common pool resources upon which whole village depends.

4. PRE-LAND USE ACT LAND TENURE SYSTEMS IN NIGERIA AND SUSTAINABLE ECONOMIC DEVELOPMENT

In Nigeria, before the introduction of any form of statutory land law, access to and the use of land was generally regulated by the customary tenure that was prevalent in a particular ethnic society. The customary land tenure system is the system of landholding indigenous to Nigeria. The evolution of the customary land tenure system and the various principles guiding them vary from one ethnic group to the other and reflect the custom and tradition peculiar to the different ethnic groups.

In northern Nigeria for instance, the land tenure system was regulated by Islamic and customary laws under which land belonged to the people with the ruler (i.e. the Emirs) being a mere trustee.²³ The general principle underlying the Moslem land law is that land is a gift of God (Allah) and that everybody has usufructuary right to it; that is that the occupier has the right of access to land, a right to use and enjoy the fruits of it and the right to prevent others from interfering with the land. The power of the emir with respect to land was limited to the mere administrative control over vacant land in the interest of the Moslem community.²⁴ By 1900 however, the colonial administration introduced statutory land law, which modified Islamic and Customary land laws. These statutes generally referred to as "benign" legislation

22 *Sustainable Development Definition/Biodiversity A-Z* <<https://www.biodiversity-a-z.org> accessed on 26 September 2017. See also: <https://en.m.wikipedia.org> accessed on 26 September 2017.

23 Yakubu, M.G, *Land Law in Nigeria* (Macmillan, London) pp.8-12.

24 See Charles O., *The making of Northern Nigeria* (Cyprus, 1961) p.244 where he states the position of the Emir over land from the reports received from the residents from Northern Nigeria.

aimed at protecting the indigenous peoples' land rights against the "wiles and trickery" of the non-natives.²⁵

Following the above arrangement, the colonial land policy in Northern Nigeria was called "paternalistic policy". The Land Tenure Law and Land Policy of Northern Nigeria came up as offshoot of Northern Nigerian law committee of 1908, which made wide-ranging recommendations later promulgated as the Land and Native Rights proclamation 1910. This proclamation was at several times repealed and re-enacted but finally culminated into the Land Tenure Law, 1962.²⁶

The policy thrust of the land Tenure Law 1962 was to declare the whole of the Lands in the Northern Protectorate of Nigeria as native lands, and all rights over them were under the control and subject to the disposition of the Minister for Land and survey who was to administer them for the common benefit of the natives. The Minister was to pay due regard to native laws and customs and was empowered to grant right of occupancy to both natives and non-natives.²⁷

In the Southern part of Nigeria before statutory land law was introduced, customary land tenure was the practice. It is the major policy of the customary land tenure in Southern Nigeria that land was not alienable to an outsider because it was believed to be a sacred providence that must be preserved and protected at all times.²⁸ The common slogan among the natives in the South was that "we come from the ground and we have to go back to the ground and it is altogether out of place for anyone to think of selling the ground".²⁹

The basic rule under customary land tenure system is that land belongs to the villages, communities or families, with the chief or headman as "trustee" holding the land for the use of the whole village, community or family.³⁰ Under the customary land tenure system in Southern Nigeria, individual members of the family or village or community were allotted part of the family land. The allottees could not alienate

²⁵ James, R.W. *Nigerian Land Use Act policy and Principles* (University of Ife, Press Ltd, 1978) pg.2; See also Oloyede P.A. *Modern Nigerian Land Law* (Evans Brothers, Ibadan, 1989), p.296.

²⁶ Oloyede P.A. 'Development In Land Law And Law Of Conveyancing In The Challenges Of Nigeria Nation: An Examination Of Its Legal Development' 1960-1985 (ed.) Afuda T.A. NIALS Lagos 1985 p.108. See also the Preamble to the Land Tenure Law 1962.

²⁷ See Section 6(1) of the Land Tenure Law 1962 Cap.59 Laws of Northern Nigeria 1963.

²⁸ Abubakar M. 'The Land Use Act Policies' (2006) 1(1) JPCL ABU Zaria, 72.

²⁹ Nwabueze B.O, *Nigerian Land Law*, (Nwamife Publishers Ltd, 1972).p.319.

³⁰ *Amadu Tijani v. Secretary Southern Provinces* (1921) A.C.P 399. See also *Lewis v. Bankole* (1908) 1 NLR p.82.

or part with possession without the consent of the family. In *Alao v. Ajani*,³¹ the children of the original allottee of family land demolished a building erected by the deceased family member and purportedly granted a 40-year building lease of the land to strangers without the consent and approval of the family. It was held that the lease agreement was null and void.

The consent required by individual in order to alienate a family property is not the consent of all members of the family as this might be difficult to obtain in practice. Therefore, the consent of the family head and the principal members was enough. The position at customary law therefore was that alienation of family property without the consent of the family head is void *ab-initio*.³² Also where the family head alienate family property without the concurrence of the principal members, the alienation is voidable.³³ Although Lagos was administered as a separate entity from the rest of Southern protectorate, the inhabitants held land under Customary Land Tenure until 1861 when the British Government formally introduced its colonial administration in Lagos.

In all the above developments, it is to be noted that under strict customary land tenure, alienation and individual ownership was not common. With the influence of British administration, several legislations emerged which paved way for alienation, individual ownership and control of land to meet the need for rapid social and economic development of the emerging nation. The foregoing represents a brief summary of the nature of customary land tenure systems that were in place both in the Northern and Southern part of Nigeria before the promulgation of the Land Use Act 1978.³⁴

Perhaps the common feature in the different tenure systems is that the systems were tied to the simple requirement of the people: subsistence agriculture and sedentary nature of the societies. Some of the problems associated with performance of customary land tenure system ranged from social, economic, cultural and institutional factors. For example, under the customary land tenure system, land fragmentation among family members made it impossible for large-scale agriculture.

31 (1989)4 NWLR (Pt. 1113) p.1 The court in *Alao v. Ajani* (supra) relied on its earlier decision in *Shelleh v. Asajon* (1957) 2FSCP65 here the fact that a member of the family replaced the thatched roof of the house which she occupied with corrugated iron sheets did not move the court to hold that she was the owner of the house.

32 See *Ekipendu v. Erika* (1959) 4 FSC p.79

33 See *Esan v. Faro* 12 WACA p.135, *Adejumo v. Ayantegbe* (1989) 3 NWLR (Pt 110) p. 417 at 432, *Mogaji v. Nuga* (1960) 5FSC p.107.

34 Cap 202 LFN 1990 as amended.

The system of customary land tenure was not able to meet the rising demand for land, owing mainly to the small size of individual holdings. Except for the provision of land for residential purposes, land requirements for agriculture and related industries cannot be adequately provided through individually held land. Hence neither productivity, gain nor increases in employment were achieved.

Associated with small size individual holdings resulting from fragmentation was the restriction placed on the individual holder's capacity to transfer land and the categories of persons to whom land may be transferred. It has been argued that this restriction hindered the emergence of market transactions in land whereby access is ideally determined by supply and demand factors as well as entrepreneurial ability. It also hindered the emergence of modern property right system founded on principles of contractual law and economic efficiency.³⁵ A tenure system influences the volume of agricultural credit and the actual distribution of credit especially where the existing credit systems place undue emphasis on land as a form of collateral.

Unfortunately, land tenure systems that prevent or limit the mortgaging of land impede the delivery of credit. Thus, the insistence on land as security reinforces inequalities against non-land holding farmers (for instance, the owner-occupier could mortgage his land; the leaseholder could mortgage his lease, whereas the sharecropper and cultivator under communal tenure have no mortgageable rights in land).³⁶ In the words of Smith,³⁷

a system of land holding which provided for the descendants of the original land owner by ensuring that the land was kept in the family and remained practically inalienable, had the particular disadvantage of impoverishing families as there might be no funds to maintain the land by raising money for its improvement or repair through sale, mortgage, lease, or charge.

Under customary land tenure system, it was practically difficult for Government to acquire land for public purposes. Also, acquisition of land by industrialists and private companies was equally difficult. In all these cases, the amount of compensation demanded from Government and private companies were exorbitant.

³⁵ Migot A. Hazell S, Blaret P, and Place, F. 'Indigenous Land Rights System in Sub-Saharan Africa: a Constraint on Productivity' (1991) 5(1) Wood Bank Econ. 155-175.

³⁶ Binswanger, H & Rosenzweig M 'Behavioural and Material Determinants of Production Relations in Agriculture' (1986) J. Dev. Stud 22: 523-529.

³⁷ *Ibid*, p.102

This did not provide opportunity for rapid industrial growth, which would generate mass production, employment and ensure sustainable economic development.

A good tenancy system should give adequate security of tenure to the person cultivating the land. This contributes to both agricultural development and land resource conservation. This was not possible in all cases under customary land tenure system because if a person is not a member of the land holding family, his interest in the land was at the pleasure of the family or community who in the first instance have collective right over the land. Under this insecure tenure system, a farmer is tempted to exhaust the soil in order to reduce production costs, while the landlord and the community bear the final costs in terms of land degradation.

In all the above, it is believed that African customary land tenure systems including the customary tenure systems in Nigeria before the Land Use Act posed insurmountable obstacles to agricultural development and resource conservation.³⁸ As mentioned above, the various factors contributing to the obstacles included the lack of individual responsibility for land use, fragmentation of plots, lack of security of tenure, restricted economies of scale and limited access to credit.

Nonetheless, customary tenure remained the principal form of landholding throughout Nigeria as late as the early 1970s. However, individuals and business enterprises drove up land prices, especially in newly urbanized areas, by investing heavily in real estate. In the south, customary owners turned from land sales to more profitable high-rent leasing arrangements. In the north where land was held only by permit, farmers on the outskirts of cities become victims of developmental re-zoning. Their permits were revoked and they got only minimal compensation when they moved to other areas. Despite the attempt made by the various legislations to reduce the negative impact of the customary land tenure on national development, it was discovered that there were increased agitation for reform of the system of land tenure in the country as a panacea for accelerated growth and sustainable economic development. The problem of development of the economy of the country can only be combated where land is properly managed. From studies across the developing world, land degradation is heightened where tenure is unclear or not upheld.³⁹

38 Meck C.K. *'Land Tenure and Administration in Nigeria and Cameroons: Colonial Research Studies'* (1957), No. 22 London, HMSO.

39 Thebaud B. *'Land Tenure, Environmental Degradation and Desertification in Africa: Some Thoughts Based on the Sahelian Example'* (London: International Institute for Environment and Development, 1995; Turner S. *'Sustainable Development: What's Land Got to Do with it?'* (Bellville: Institute for Poverty, Land and Agrarian Studies, Policy Brief No. 2, 2001). See also Clarke R.A. *'Securing Communal Land Rights to*

5. LAND TENURE UNDER THE LAND USE ACT AND SUSTAINABLE ECONOMIC DEVELOPMENT

In response to a potential crisis in land distribution, the Federal Military Government promulgated the Land Use Decree of 1978, establishing a uniform tenure system for all of Nigeria. Subsequently incorporated in the Constitution of 1979, the Decree effectively nationalized all land by requiring Certificates of Occupancy from the government for land held under customary and statutory rights and the payment of rent to the government. However, the Decree stipulated that anyone in a rural or urban area who normally occupied land and developed it would continue to enjoy the right of occupancy, and could sell or transfer his interest in the development of the land.⁴⁰

The Act intended to address some important issues arising from the former land tenure systems in Nigeria, including the problem of lack of uniformity in the laws, the uncontrolled speculation in urban land, access to land by Nigerians on equal legal basis and the fragmentation of rural lands. On the other hand, the Act intended to stimulate investment in agriculture by enhancing land use security, optimize land use, ensure sustained improvements to land quality, and enlighten the people on the right to use land.⁴¹ The preamble and section 1 of the Act underscore the intention of the Federal Military Government in promulgating the Act. The preamble reads:

Whereas it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law. And Whereas it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assumed, protected and preserved.⁴²

Section 1 of the Act provides:

Subject to the provisions of this Decree, all land comprised in the territory of each State in the federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the

Achieve Sustainable Development in Sub-Saharan Africa: Critical Analysis and Policy Implications, Law Environment and Development Journal, Volume 5.

⁴⁰ <http://www.photius.com/countries/nigeriaeconomylandusesoilsand10013.html> accessed on 22 September 2017.

⁴¹ Arua, E.O. 'Using the Land Use Decree 1978 as A Policy Guideline in Developing Farmers' Cooperatives in Nigeria' (1981) Chapter 7. in Igbozurike U.M, ed. *Land use and Conservation in Nigeria*. (Nsukka, Nigeria, University of Nigeria Press).

⁴² The Preamble to the Land Use Decree 1978 (now Cap.L5 Laws of Federation of Nigeria 2004).

use and common benefit of all Nigerians in accordance with the provisions of this Decree.⁴³

Other provisions of the Act worth mentioning include section 2 dealing with the control and management of land by the government and the Land Use and Allocation Committees; Section 5, which gives the governor power to grant Statutory Rights of Occupancy, and Section 6, which gives similar power to local governments in respect of Customary Rights of Occupancy. Others include section 10 dealing with payment of rent to the governor; section 22 rendering unlawful alienation of statutory right of occupancy without prior consent of the governor; section 26 voiding any deed that violates Section 22; section 28 empowering the governor to revoke a right of occupancy for overriding public interest and section 29(4) dealing with compensation for land.

Despite the laudable objectives of the Act, there are certain provisions, which have kept the realization of those objectives unfulfilled thereby making it impossible to usher in the needed development. According to Justice Nnamani:⁴⁴

the lofty hope in the second stanza of the preamble that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them provide for the sustenance of themselves and their families be assured, protected and preserved or in section 1 that all land be held in trust and administered for the use and common benefit of all Nigerians has been nothing but a forlorn hope, a pipe dream.⁴⁵

For instance, the limit of land allowed each person by section 34(5) and (6) of the Act has been totally ignored. The current situation is that land is less available to the ordinary Nigerian than it was pre-Land Use Act thus holding most of the citizens to the unenviable state of perpetual tenants.

Another aspect of the Act that has brought untold hardship includes the provision relating to issue of Certificate of Occupancy and grant of consent to alienate. Both can take years and the applicant is subjected to bureaucratic action and cumbersome procedures, which tend to adversely affect economic and business activity thereby impeding industrial take-off. Before the enactment of the Act, it was quite

⁴³ Section 1 Land Use Act Cap.L5 Laws of Federation of Nigeria 2004.

⁴⁴ Nnamani A., *The Land Use Act – 11 Years After*, Business and property Law, vol.2 No.6, 1985, p.31.

⁴⁵ *Ibid.*

convenient to obtain loans from banks and other financial institutions for business and other development purposes by depositing title deeds in the understanding that the financier could dispose the bare land and developed land in the event of the borrower's inability to pay up the loans. Such transactions are very difficult under the Act because of the consent requirement. The restriction placed by section 22 of the Act requiring consent for transfer or mortgage of a right of occupancy has not enabled the tenure system under the Act achieved the needed sustainable economic development.

Other defects in the tenure system under the Land use Act includes the deliberate removal of family holding rights, the absence of provision for compensation for acquisition of undeveloped land, lack of adequate compensation, the inability of smallholders to increase their holdings, the absence of effective policy on optimum land use that account for ecological variation, absence of a national cadastral survey and effective registration instruments.

All these defects show that the Land Use Act has not been able to achieve the main objectives of its creation. It has on the contrary increased land conflicts amongst citizens, complicated the land tenure concepts and land administration procedures and encouraged land degradation which is against sustainable economic development. The role of secured land tenure rights in protecting vulnerable people from deepening poverty has become critical in today's world where competition for access to resources and efforts to enhance the efficiency of land use are the main drivers of the development process.⁴⁶

6. FINDINGS

For a land tenure system to be able to usher in the desired sustainable economic development, findings have revealed that certain land rights must be developed and protected. These land rights include but are not limited to the following:

- 6.1 *Secured Land Rights*: - the tenure system that will usher in sustainable economic development must ensure that all communities, families, individuals and legal entities enjoy secured land rights free of fear that their land will be taken from them, expect in accordance with the legal due process.

⁴⁶ 'Land Tenure Supports Sustainable Development- the United Nations'
<www.un.org/sustdev/csd/csd16/documents/fao.../landtenure.pdf> accessed on 22 September 2017.

- 6.2 *Economic Growth:* - tenure security is a means to enjoy economic growth by contributing a stable investment environment and food security because investors and landowners know there will be enough time to recover the benefit of their investment. Economic growth and tenure security are complimentary to each other. Farmers will be more likely to make medium-to-long term land improvements if their tenure is secure because they will be more likely to benefit from investment.
- 6.3 *Equitable Benefits:* - a tenure system capable of improving sustainable development must ensure that the benefits of economic growth are equitably distributed by creating wealth for all citizens.
- 6.4 *Equal Access:* - which means that all persons irrespective of ethnic background, race, sex, creed, place of origin or political opinion are entitled to fundamental land rights.
- 6.5 *Environmental Protection:* - land is a precious source that must be used, managed and administered in a sustainable manner in order to ensure the protection of the environment and long-term economic growth.

7. CONCLUSION AND RECOMMENDATION

This paper has been able to clearly demonstrate that the Nigerian customary land tenure systems as well as the tenure under the Land Use Act have not been able to sustain economic and social development over the years. We have highlighted in this paper the defects in the various tenure systems militating against sustainable development in Nigeria. Since the Land Use Act had introduced a uniform tenure for the whole of Nigeria, there is urgent need for a review of some of its provisions that will pave way for sustainable economic development.

In the first place, the coverage of the statute appears to be too wide and needs to be narrowed. If the main intention of the Act was to make land available to Nigerians as declared in the preamble, then it should have been confined to lands that were unutilized at the time the Act was enacted. For instance, family houses, compounds, shrines and other places of religious worship lawfully occupied by their owners should have been excluded just as land occupied by the federal government were taken out of the scope of the Act, so are lands held by families by rules of succession under customary law.

Secondly, if one of the aims of the Act is to check land speculation, the fixing of a minimum amount of land one could hold is quite ideal, but there is no justification for restricting right in land to a mere right of possession in favour of an absolute title. There is certainly room to accommodate absolute title within the objectives of the Act as disclosed in its preamble, subject only to forfeiture in the case of an attempt to dispose of the land by sale or by transfer of the family to non-Nigerians.

Thirdly, because the main objective of the statute is to ensure that all Nigerians enjoy the benefit of land, a landowner should be free to transfer his possession to fellow Nigerians without the Governor's consent. This system had worked admirable in the northern part of Nigeria where the Land Tenure Law was in operation. However, to achieve sustainable economic development, it is submitted that Nigerian land tenure system laws should be structured to enhance speedy redistribution of land. Also there is a need to provide security of tenure as a condition for boosting agricultural production. Rural people generally need both secured individual rights to farm plots of land and secured collective rights to common pool resources upon which whole village depend.