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Harnessing Customary Land Tenure for Sustainable Land Resource Management in Rural Nigeria

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Abstract. Customary land tenure is the primary form of management of rural land in Nigeria. Although other land tenure systems operate alongside it, it primarily regulates the ownership rights and the appropriation of land resources in the rural settings. This study overviewed customary land tenure and the Land Use Act 1978 (LUA). The changes the LUA introduced to its operation and the results of the intervention were discussed. The study appraised the role of customary land tenure in sustainable rural development. A doctrinal research method which made use of primary and secondary sources was used. The primary source included the domestic statutes such as the Land Tenure Law 1962, LUA, 1999 Constitution of the Federal Republic of Nigeria, etc. and case law The secondary source included textbooks, journal articles, conference proceedings and the internet. It was revealed that in most parts of Nigeria, rural lands are under the customary land tenure, regulated by customs and culture of the communities. It was suggested that the LUA adopted the operation of the customary land tenure with modifications and that the intervention on the system dislocated rural peace. However, the incidents of customary land tenure were found to be capable of ensuring sustainable development in the rural areas. While reforms were suggested, the use of customary land tenure is recommended for the reduction of poverty, hunger and violence and an increase in employment and wealth creation.

Keywords: Deemed Customary Rights, Land Tenure, Rural Conflicts, Sustainable Development

1. Introduction

Customary land tenure is the land holding system which is traditional to Nigeria and distilled from customs, values and practices of the peoples (Otu, 2022). The tenure is enforced by various High Courts of the Federation subject to its compliance with principles of equity and good conscience and by not being incompatible either directly or by implication with any law for the time being in force in any part of Nigeria (Evidence Act 2011, S. 14(1)). For the avoidance of doubt, customary law is also enforced in the State High Courts of States.

The security situation in rural Nigeria has reached a critical level. It has impacted negatively on the children's access to education, deprivation of human rights and has caused humanitarian crises, in most parts of northern Nigeria, comprising three geopolitical zones, namely Northwest, North Central and Northeast zones (OSIWA, 2024). In southern part of Nigeria, crises erupted upon the passage of the Land Use Act in 1978 which ignited age-old feuds over customary access to land. Notable among which are the Ife/Modakeke (Toriola, 2001). Crises in Southwest Zone which spanned over decades; Erin Ile and Offa in North Central Zone and various land resource disputes in which lives and properties had been lost in Southeast and Southsouth Zones. The Niger Delta Crisis negatively impacted on Nigeria's economy and promoted humanitarian crises in the Southsouth Zone (Oluduro and Oluduro, 2012). The authors suggested that post amnesty, efforts should be made to address the underlying factors (economic, social and environmental) which were responsible for the militancy in the first instance. This observation is particularly relevant because the ancestral homes of the Niger Delta people, where Nigeria's crude oil is being prospected, had suffered extreme pollution which prevented them from using the land for further economic and residential purposes (Oluduro and Oluduro, 2012).

The various crises could, perhaps, be attributed to poor management and utilisation of natural resources in Nigeria. Since the colonial intervention after the Berlin Conference of 1884 – 1885, most of the legacies of the African empires, cities and communities had been relegated, while the colonial heritage took over (Gate and Appiah, 2015). This relegation was more prominent in the implementation of customary law which effectively regulated the affairs of the peoples and kingdoms to the applauds of the early explorers (Cartwright, 2024). An important aspect of these is the effect of the colonization on the customary land tenure law on the management and control of the use and the ownership of land (Otu, 2022).

This paper realised that many studies have been conducted on land tenure practices in Nigeria such as the Received Doctrine of Estates, State Ownership under the Land Tenure Law, Cap 59 Law of Northern Nigeria 1962 and the Land Use Act 1978, Law of the Federation of Nigeria 2004, while less studies have focused on the nature, use and operation of the customary land tenure and its role in sustainable development in Nigeria's rural areas. Paying attention to the customary land tenure law in rural areas in Nigeria could bring about identifying the challenges inherent in it. It would also provide a roadmap to various stakeholders who could be interested in using land for agricultural development and security.

This study aims at harnessing customary land tenure for sustainable development in rural Nigeria. Its specific objectives are to:

- undertake an overview of customary land tenure in Nigeria
- discuss innovations and developments which the Land Use Act introduced to it for sustainable development in resolving rural conflicts in Nigeria.

The study made use the doctrinal research method, relying on primary and secondary sources of information was adopted.

2. Overview of Customary Land Tenure in Nigeria

Land has been variously defined in law, but the definition that is adopted for this study is that of Garner (2004) which sees land as 'an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface and everything growing or permanently affixed to it'. This definition has underlying assumptions, which are both natural and artificial (Nwabueze, 1982). The natural element consists of the physical structure of the land and its sub-soil, including all those things growing naturally on it. But its artificial content occurs when other structures and trees have been affixed to it. In *Salami v Godoolu*, (1997) 4 NWLR (Pt. 499) 287, Adio JSC stated that:

The word 'land' in its ordinary meaning means any ground, soil or earth, or the solid part of the earth's surface as distinguished from sea… the fact is that, by its very nature, land ordinarily is an immovable object.

The distinction of land into its natural and artificial elements is in line with the maxim of *quicquid plantatur solo solo cedit* which literally means anything that is attached to the land belongs to the land. This is the definition of land at common law, which Nigeria courts have adopted to define, describe and typify land in Nigeria.

2.1 Nature of Customary Land Tenure

Nigeria is a multi-ethnic and multi-cultural nation, with its diversity spanning across ethnicity, cultural worldview, religion and politics. The nation "Nigeria" came into existence in 1914 when the then Governor-General, Frederick Lord Lugard, amalgamated the southern and northern protectorates (Isiani and Obi - Ani, 2019). This singular effort brought together peoples whose ways of lives, attitudes and religious together as one. The implication of the amalgamation was the breakdown of the pre-existing law and order which sustained the great empires such as Oyo, Jukun, the Hausa States and so on. Though, at the twilight of the invasion of the civilization of the indigenous peoples constituting Nigeria and the subsuming of their governance system under the British imperialism, the Hausa States had been colonised by the Fulani Jihadists which introduced state ownership of land (Smith, 2013). The learned author further commented that in southern parts of Nigeria (the southern protectorates) customary law was used to direct the affairs of the people, including land relationships before the colonial administration. The colonial government introduced Received English law which accepted statutes of general application in operation as of 1st January 1900 in England, the doctrines of estate and the principles of common law. It also allowed the continued operation of the customary law subject to necessary modification that would make it compliant with the Received law (Evidence Act 2011, Section 16). The customary land tenure which emerged from the cultural contacts the Jihadists (Northern Nigeria) and the colonialists in all parts of the Nigerian federation had accommodated new ideas, concepts and

philosophies in line with its ever dynamic and flexible nature.

The question which has engaged the attention of scholars is whether the concept of law at common law rule of *quicquid plantatur solo solo cedit* applies to the customary land tenure. The insight into this question could be had from the case law and the opinions of legal scholars. In *Okoiko v Esedalue,* ((1974) 1 All NLR (Pt 1)), the issue was considered for determination. The pledgor pledged vacant land to the pledgee who, during its use and enjoyment of the land planted rubber trees on it. On redemption, the pledgee requested for compensation for the rubber trees planted on the land. The trial court rejected the claim 'as inability of the mortgagor (that is the pledgor) to pay such compensation may deprive the mortgagor the right of redemption of the property which native property and custom allows him.' The trial judge, however, ruled that the pledgee should be given opportunity to remove the property and structures which included the rubber trees, before possession was taken by the pledgor' On appeal to the Supreme Court, the part of the judgement of the trial court which gave the pledgee the powers to remove the economic trees was overturned. Elias CJN stated in *Okoiko v Esedalue* (1974) All NLR (Pt 1),340 that:
We think that the planting of the land with economic crops like rubber must be regarded as necessarily incidental to the use of the land since there is no evidence that was forbidden under the terms of the original pledge; but it is also clear, nevertheless, that the pledgee has no right to compensation or credit for the plantations, which accrue to the pledged land on the principle of *quicquid plantatur solo solo cedit*. It was therefore an act of grace rather than as a matter of legal right that the learned trial judge ordered the appellant to permit the respondents to reap the next harvest before returning the pledged land to the appellant. The law is that the pledgee should quit the land as from the date of judgement in favour of the pledgor.

However, in *Okoh v Olotu* (1953) 20 NLR 123 and *Samteng Dakuh* (1925) ENLR 87, it appears that the Federal Supreme Court has reviewed its support for the *quicquid plantatur solo solo cedit* on equitable ground at the customary law, which it notes that separate rights of ownership of land and that of the economic trees often exist on land in customary tenure. It expressly holds that the owner of the land may not be the owner of the economic trees, and the owner of the economic trees has the rights to remove or demolish or sell the crops to the landowner at the expiration of his tenure. Although a member's allotment is exclusive to him, such cannot be transferred by sale or inheritance (*Akeju v Suenu* (1925) 6 NLR 87).

Cases which reject the application of the principle of *quicquid plantatur solo solo cedit* do so on equitable grounds rather than on its basis of non-applicability to customary land transactions (*Uwam v Akom* ((1929) 8 NLR 19) and in some cases, are of Ghanaian, not Nigerian origins, (*Santeng v Dankwa* (1949) 6 WACA) and may therefore not be typical of the customary land relationship in Nigeria (Otu,2022).

The conclusion that arises from the foregoing analysis of the nature of customary land tenure in Nigeria is that it subscribes to the common law principle and sees land as including permanent attachments and features on it, subject to some exceptions based on equitable grounds. The implies that under customary land tenure, whenever a fixture such as a house is given as a security for credit, it would not mean that the land is included, although it would include the other fixtures unless such is excluded (Nwabueze, 1982; Otu, 2022).

2.2 Features of Customary Land Tenure

Customary land tenure differs from a community to another. Its conception and operation are determined by the customs of the people of the communities. In addition, it is flexible and unwritten. It represents the ways and practices of the communities from the past, but it is dynamic and changes in accordance with the customs. Some of its basic features are considered *infra.*

2.2.1 Communal Ownership

It is based on the concept of communal ownership which sees land as belonging to the community, or the group. Hence, no member of the family has individual or separate right of ownership to the land. A learned commentator, Nwabueze (1982) argues that: 'There is perhaps no rule of customary law that is more firmly established than that no member of a land owing community or family has a separate individual title of ownership to the whole or any part of the family land.' The learned writer further argues that the nature of traditional communities, villages or families makes it impossible for an individual to lay claim to a vast indivisible portion of land. Only a portion may be allotted for a member to use. Hence, communal ownership is different from co-ownership under the English law because land belongs not only to the living, but also the dead and yet unborn, which makes it operating on "the descent to future generation" (Nwabueze, 1982). Its right of ownership depends on communal membership and not by way of filial

inheritance. The implication of this is that land under customary tenure belongs to the dead, the living and the yet unborn, with the interest of the dead and unborn members appears more important than that of the living whose duty is to safeguard, protect and transmit the communal land from their ancestors to the yet unborn.

However, a 'state' (for example a kingdom or an empire in the pre-colonial days), may own lands as a corporate entity, under the customary tenure. Such land is regarded as a 'stool' land, but largely, it is the community village or family that owns larger portion of the land either as chieftaincy or family lands. These land owing groups are not legal personalities, but a group of people who have common interest and may be liable, individually or in group for debts incurred on the land (Oluyede, 1989).

In distinguishing between the crown land and the chieftaincy/family land, the learned author affirmed that paramount ruler has complete and exclusive use of stool land as he pleases in his lifetime, while in the case of chieftaincy/family land, members of the family can farm on portions of the land with the chief/family heads consent. The chief/family head has no more than an interest as a member of the community and a consenting authority. The chief/family head cannot appropriate and expropriate the land without consultation with the corporate members (Umezulike, 2004), but recent trends have suggested that although outright transfer was uncommon in the past, it is now permitted due to innovations on customary tenure which makes it possible to alienate land by way of gift or sale (Innegbedion, 2004).

2.2.2 Administration of Communal Land

The basic units of the communal land holding the community, the village and the family. These units can only act through the rulers, chiefs, headmen, principal members and members. Hence, in *The Military Government of Mid-Western State of Nigeria v The Itsekiri Communal Land Trustees* (Suit No W/SS/1968 of 10/10/69 (unreported), High court Warri) a suit was filed by a community in its own name "Obosi" rather than in the name of its head, or other representatives. It was decided that although the community "describes a large number of people having a common relationship, it is neither a natural nor a legal person capable of suing or being sued in our courts. There being no representative, no process can be served on it, and it cannot itself issue any process." Based on this, it can be surmised that the administration and control of land in communal settings are not vested in the corporate groups, but in either the crown as the head of the community, or in the group of persons as the authorised representatives of the people. (Otu, 2022).

In the management of communal property, chiefs, family heads, rulers or leaders of the community are in control and administration. They emerge based on the customs and practice of each community (Ikpambese, 2010). The chief or leader of the community controls and manages the communal land in consultation with the principal members of the units in the community. A chief in this context refers to "a person who, in accordance with the law in force in any part of Nigeria, is given the dignity of a chief by reference to that part, or to a community established in that part" (Interpretation Act 1990, Cap 192 LFN 2004, Section 18(1)). A chief may, therefore, be construed as a leader of a tribe or a clan *(Amodu Tijani v The Secretary of State of Southern Nigeria*, (1921) AC 399), whose role as a 'trustee' on land is not an owner but mainly as that of leader in his community (*Taiwo v Sarumi* (1913) NLR 103). In performing this role, a chief may combine the role of a landowner in his private capacity to his pre-eminent position of being in control and administration of community land. The above situation came before a colonial court for decision. The court observed that a chief, Olofin of Isheri, had been functioning as a chief in charge of the communal land, and as a landowner.

The Chief or whomsoever acting in that capacity under customary tenure does not have the ownership of the community land under his control. The question is, what is then the role of a chief in the management and control of the land? The communal chief does not have the ownership right on the land in his area. The Privy Council in *Amodu Tijani's* case decided that:
All the members of the community, village or family have an equal right to the land, but in every case the chief or the headman of the community or village, or head of the family, has charge of the land, and in a loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family.

In a similar vein, a learned commentator, Nwabueze (1982) considers the chief as the "alter ego" and the first member, in order of precedence in the community, village or family who could exercise ownership rights on the communal lands, subject to individual members' rights. The learned author further argues that a full understanding of the position of the chief could be attained if the title of ownership is divorced from its exercise. While the title of

ownership belongs to the community, it is the chief who exercises it on behalf of the corporate.

The position of a chief under the customary tenure is a complex one. Nwabueze's description of the position is adopted for this paper. The learned writer states:
The truth is that the position of the chief in relation to communal land is a peculiarly unique one, a uniqueness which is borne out by the fact that without the active participation of the chief, no outright alienation of the land can be validly made, notwithstanding that all other members desired and approved of it.

The position of the learned writer emanated from the customary land tenure principles which had been judicially cited upon by the courts. In *Agbloe v Sappor* (1947)12 WACA 187), the court believed the legal title could not be transferred without the approval of the chief. Only the chief is imbued with the necessary power to allocate land to members. In *Odunsi v Ojora* (1961) 1 All NLR 283*)*, the Supreme Court affirmed that even when the community opposed the appointment of a chief who had been validly appointed by the prescribed authority, no other person could perform the task of managing the communal property except him. The fact of the case was that the appellant was duly capped Chief Ojora by the Oba of Lagos upon which he had powers to head the Ojora family of Lagos. His appointment was, however, opposed by most of the family members who only conceded to him the social and other privileges, while they elected another member of the family, the respondent in the case to be the family head, with the power of management of the family property. It was decided that only the family head appointed in line with customary law could manage its property and that the family lacks power to divest him this power.

2.2.4 Members Rights to the Communal Land

All members have certain rights in the communal land which must be taken into consideration in exercising the powers for the benefit of the community. These will be briefly discussed in this section.

2.2.5 Right of Allotment

A member has a right to the use of a communal land. This right is inalienable, and the chief cannot deprive a member of this right. A member has a right to enforce it against the chief, or any other member who deprives him of the access to its use (Nwabueze, 1982). This includes the allotment of a parcel of land for farming and residential purpose(s). This right is not discretionary as it is mandatory for every chief to ensure that this inherent right of members is not jeopardised. However, this right is limited to the quantum of land necessary a member requires to farm and reside. Where a chief fails to allot a piece of land for the use of a member, without a reasonable exercise, the member has a right to enforce the right before the court to compel the chief to act. In *Ajobi v Oloko* (1959) LLR 152 it was upheld that the family head deliberately refused to allocate plots to members for their occupation.

However, where lands have been duly allocated to some individuals within the community (whether a family member or not), the chief can no longer reallocate to another member of the community. The individuals to whom the land has been allotted thereby acquires permanent rights in the land (Otu, 2022). Hence, the Supreme Court in *Asiyanbi v Adeniji* (SC/92/1964) decided that the Ooni of Ife had no power to revoke a grant already allotted to a person and allot it to another whether that person is a member of the family or not, without due consultation with the family.

The rules of allotment of land to both community members and those outside it but are interested in the land within the community promoted peace, reduced conflicts and eschewed insecurities in traditional communities. These rules are, however, been increasingly violated by chiefs and heads of the families who hide under the provisions of Land Use Act 1978 and the transitional provisional rules in its sections 36 to cause conflicts in rural Nigeria.

3. LUA's Innovations and Developments on Customary Tenure

Since 1978 when LUA was enacted, all rights to land in Nigeria are determined by its provisions. In its land administration principes and policies, the Act introduces innovations on the preexisting tenures, namely: the customary tenure and the Received Doctrine of Estates.

3.1 State Control over Land

Section 1, LUA states that:
Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.
The Act creates the eminent domain in the Governor who is entrusted with all lands in his domain. The

Governor has the powers to appropriate and expropriate lands through the absolute powers devolved on the office by the Act to grant (LUA, S.5) and revoke rights (LUA, S.29) of occupancy and pay compensation (LUA, S.28) when the grant is revoked for public purposes.

The concept of eminent domain could be traced to 17th century developments on land in United States of America, when the powers of compulsory purchase and, or acquisition of land by the sovereign was affirmed by the courts (Kelo *v City of New London* (2005) 545 United States 469 (SC)). Eminent domain emanated from American Jurisprudence. It was defined by *Black's Law Dictionary* as 'The inherent power of a governmental authority to take privately owned property, esp. land, and covert it to public use' (Garner2004; 601).

The eminent domain is a theory of protection of private property which has been incorporated in many constitutions worldwide, Nigeria's inclusive. Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (Cap C23 LFN 2004) is an adoption of the eminent domain theory. It is a theory that affirms, promotes and institutionalises the State control over land, which is the focus of the LUA in its section 1.

The state control of lands is alien to land control under the customary tenure. Rather, its land control is based on the power of the communal heads, chiefs and family heads who are the consenting authorities. Their authorities are not absolute as they must defer to the principal members of the land-owning units (Fatula, 2012). The position of the communal leadership in the management and control of land differs markedly from the powers of the Governor which are excessive, absolute and characterized by unreasonable delays and inconsistent grants (*Dantsoho v Mohammed* (2003) 6 NWLR (Pt 817), 457). These enormous powers have impacted negatively on the achievement of the objective of LUA, namely: making lands available to all Nigerians (*Ibrahim v Muhammed* (2003) 6 NWLR (Pt 817)).

3.2 Preserving Pre-existing Tenures

Although the LUA takes away the previous legal title which is based on ownership and replaces it with a new legal right based on possession, it does not abolish the pre-existing rights under the previous tenures. In *Ogunleye v Oni* (1991)2 NWLR (Pt. 135) 745, 784, Nnaemeka Agu JSC observed that:
… the Land Use Act never set out to abolish all existing titles and rights to possession of land. Rather, where such rights or titles relate to developed lands in urban areas, the possessor or occupier of the right or title is deemed to be a statutory grantee of a right of occupancy under section 34(2) of the Act. Where it is non-urban land, the holder or owner under customary law or otherwise is deemed to be a deemed grantee of a right of occupancy by the appropriate Local Government under section 36(2).

Hence in *Adole v Gwar* (2008) 5 MJSC 38, 66 the apex court has stated that: 'It must be borne in mind always and this is settled, that the only innovation introduced by the Land Use Act 1978 --- is that it divests any element of radical title and limits the claim to a right of occupancy.' Section 4, LUA therefore, preserves all statutes applicable to land before it, subject to such modifications as would make them conform with the Act or general intention, while section 34 preserves all pre-existing "interest valid in law" on land transactions such as mortgages, legal or equitable interests which shall be revalidated through certificate of occupancy (Abugu, 2012).

The preservation of the pre-existing tenures has made it possible for the incidences of customary tenure to continue, including the beneficial ownership until such is abridged when the holder or occupier obtains the certificate of occupancy or seeks Governor's approval as stipulated by the LUA (S.36(2)).

3.3 Land Accessibility

A cardinal objective of the LUA is to make land accessible to all Nigerians. Pre-existing land tenures did not have that direction. The intendment of the LUA is to make land available to all Nigerians for an integrated and sustainable development (Oluyede,1978) and prevent land speculation and insecurity of title (Umezulike, 2004). In doing this, the LUA subordinates customary and individual rights to state ownership and extends the paternalistic land tenure system under the Land Tenure Law to all parts of Nigeria. The policy of land accessibility is manifested in the trusteeship of the Governor over all lands in each of the states (LUA, S.1), although the role of the Governor in this regard is not that of an orthodox trustee (Fatula, 2012). The Act creates state ownership of land and uniform rules for its management. Hence, the absolute ownership of land previously vested in communities, families and individuals was taken away by the Act, at least in principle, and vested same in the Governor, for the benefit of all Nigerians. The preservation of pre-existing rights, however, allow the continuation of the customary ownership rights, as deemed grantee (Oniekoro, 2007). This presentation has been viewed by scholars as capable of frustrating the innovation

introduced by the Act in this regard (Utuama, 1990; Oniekoro, 2007), is contented to. A deemed grant enjoys greater rights beyond that of an actual grantee (statutory and customary) of occupancy under the Act because the holder or occupier is unencumbered with onerous terms and conditions found in the actual grant and is liable only to the encumbrances on the original title (Oniekoro, 2007). This greater right which cannot be defeated by a subsequent grant to another person still makes land access difficult (Utuama, 1990). For example, LUA provides that 500 and 5000 hectares of land could be granted for farming and grazing by the Local Government, with the directive that a requirement for a higher grant should be referred to the Governor for consent (S. 6(5)). This ordinarily would have solved the problem of inaccessibility to land resources for economic development, but these lands are not freed from the communal ownership and are still controlled by a customary tenure through deemed grant window created in section 36(5) of the Act.

3.4 Citizenship Property Rights

Under the customary tenure, lands belong to the communities, families, and sometimes individuals to whom the allotments have been made. Access to land is restrictive. This policy also operates under the state-controlled Land Tenure Law 1962 where a distinction is made between statutory and customary rights as it relates to persons to whom land rights could be granted. Under the Land Tenure Law, customary rights could only be granted to the natives, (LTL. S. S5) while any person could be granted statutory rights. The difference in the grant of customary right and statutory right is critical for the use and allocation of land resources. The LUA, however, does not make a distinction between a native or a non-native. A closer look at who a native is under LTL will reveal that it intends to make access to land impossible to a "non-native" who is described to mean "a person whose father was a member of any tribe indigenous to Northern Nigeria" (LTL, Section 2). this is understandable because the law is preserving the customary rights of the indigenous peoples at customary tenure. Hence, it defines "customary right of occupancy to mean 'the title of a native or native community lawfully using or occupying native lands in accordance with native law and custom."

The LUA preserves the rights of citizens to have access to lands in any part of the country they reside, whether rural or urban area as it does not differentiate between customary and rural rights. But it goes further to preserve pre-existing land rights under the applicable law (LUA S. 4 (a)). On this regard, the liberal view of the LUA to access to land for all Nigerians should be mode to complement the powers of the Chiefs to allot land to community members and strangers at customary land tenure.

4. Customary Land Tenure and Sustainable Development

4.1 Reducing Hunger

The customary land tenure plays a central role in achieving SDG 2 (Zero Hunger) in Nigeria cannot be overstressed because the bulk of arable lands are still which are still in possession of the communities, families and individuals holding under this system (Smith, 2013). It is, therefore, relevant in resolving rural conflicts in Nigeria through the exploration of customary land relationships which have been saved by a community reading of sections 34, 36 and 48 of the LUA.

Section 48 states:
All existing laws relating to the registration of title to, or interest in, land or the subject of transfer of title to any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Act or its general intendment.

By these provisions, pre-existing tenures such as customary land tenure and doctrine of estates operate, subject to their conformity with the policies and principles of the LUA. The basic requirements for conformity include: the deemed grantee (LUA, Ss.34 and 36) which recognises the occupier and holders of rural land for the purpose of regularising and obtaining Certificate of Occupancy and the Consent of the Governor (for urban land) (LUA, S.34(5))) and Local Government (for rural land) (Section 36(5)) before alienation, the half hectare rule (LUA, S. 34(5) and (7)) which forbids a holder's continued possession of more than a cumulative half hectare of undeveloped land in the urban area. Barring these, the allodial titles of the communities, families and individuals continue unabated, until the land is alienated when the consent of the appropriate authority shall be required.

Harnessing customary land tenure principles and practices could resolve many land resource disputes threatening food security, promoting hunger deprivation in rural Nigeria, riddled with herdsmen attacks, ethno-religious conflicts, banditry, cattle rustling, insurgency and resurgency (Salawudeen, 2019).

4.2 Increasing Land Access

The LUA was enacted to make land available to all citizens. In order to do this, it vests the lands in the states of the federation in the Governors. Despite this, and more than four decades since the Act had become operational, land is still not available for agricultural and other economic activities in rural areas in Nigeria (Abugu, 2012). This problem could arguably be attributed to customary land tenure, under which most lands in rural areas are held (Salawudeen, 2019).

It has been observed that LUA does not revoke or amend the respective rights of customary landlord and the tenants (Olong, 2011). Rather the Supreme Court had to comment on the effect of the law in *Ogunleye v Oni* (1989) 1 NWLR (Pt 97) 305 as follows:
--- the Land Use Act is not a magic wand, it is being portrayed to be or a destructive monster that at once swallowed all rights on land and that the Governor or local government with mere issuance of a piece of paper, could divest families of their homes and agricultural lands overnight with a rich holder of a certificate of occupancy driving them out with bulldozers and cranes.

The implication of this statement is that the LUA does not in fact change the structure of land ownership. What it does is to merely introduce some principles and policies to guide the appropriation and expropriation of the land by the Governor. All the customary land tenure incidents such as customary tenancy, kola tenancy, customary pledge continues to operate under the LUA, subject to necessary modification (LUA, S. 47). To make lands available, these aspects of customary land tenure would have to be explored for use.

5. Conclusion

5.1 Summary

The customary land tenure is the indigenous form of method of administering land titles systems in Nigeria. it arose from the customs and practices of the peoples indigenous to Nigeria. This study undertook an overview of the customary land tenure, discussed innovations and development which LUA had brought to the customary tenure and appraised the sustainable development in rural, and predominantly agricultural communities. The study examined ways of harnessing customary land tenure for sustainable development in food production in Nigeria.

The study looked at the principles and incidences of customary land tenure such as corporate and individual ownership, land administration under it and some of the challenges it faced in view of the increasing modernisation and globalisation. Innovations were introduced by LUA into the customary land tenure by the LUA, which recognised, modified and streamlined it for the challenges of development. The customary tenure was considered for further innovations and use in view of the failure of the LUA to meet the current spate of a multi-cultural, multi-ethnic and multi-religious nation like Nigeria.

5.2 Findings

The study affirmed that customary land tenure had existed from time immemorial, and its principles were dynamic, flexible and responsive for the rapid development of agriculture, grazing and other economic activities.

It was also revealed that customary land tenure had survived all legislations on land tenure systems introduced to Nigeria. The first of such legislation was the Treaty of Cession 1861 signed by King Dosunmu of Lagos. It also survived, and indeed was nourished by, the LUA, through its doctrine of deemed grantee, subject to necessary modifications to make it comply with its principles and policies.
The LUA affirms incidents of customary land tenure such as customary tenancy, kola tenancy, customary pledge. In addition to making land accessible to members of the communities, and strangers who may not have access to land for residential, farming, grazing and other business purposes like other incidents, customary pledge raises funds for the landlords as security, and it is a form of customary mortgage.

5.3 Recommendations

In view of the importance of the customary land law principles and practices to land management in Nigeria and its flexibility and dynamism, the administration of land under the LUA should include guidelines and procedures to implement the incidents of customary land tenure without hindrance.

Customary land tenure used to be on parole agreement, innovations and modernisations which came through the adoption of the Received English doctrine of estates makes it mandatory for land transactions to be in writing should be sustained, while necessary efforts should be instituted under the extant legal regime of LUA to improve on rural land documentation to curb land speculation and money laundering in the real property sector of Nigerian economy.

Furthermore, policies, rules and guidelines for the operation of deemed grantee should be set by the State Land Allocation Committees and Local Government Land Advisory Committees for transparency.

In addition, the consent for the alienation of lands in urban and rural areas have created problems for land access. This is true of rural areas where double-decker consent is required. While the consent of chiefs/family heads are mandatory for alienation, the LUA have put some hindrances, namely the bar on local government allocation of more than 500 and 5000 hectares for farming and grazing respectively. The Governor's consent for any allocation is a bar to land access as it could delay it for several years due to bureaucracy and official corruption. The above issues deserve attention for sustainable food security.

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