

# Law, Democratisation and Social Change



*Edited by:*  
Prof. Oyelowo Oyewo  
Ms. Edefe Ojomo

**2012 NALT CONFERENCE**

**NIGERIAN ASSOCIATION OF LAW TEACHERS**



NIGERIAN ASSOCIATION OF LAW TEACHERS

2012 NALT CONFERENCE

**Law,  
Democratisation  
and Social Change**

*Edited by:*

Prof. Oyelowo Oyewo

Ms. Edefe Ojomo

UNIVERSITY OF IBADAN LIBRARY

# Law, Democratisation and Social Change

*Printed by:*

Bismot Global Concepts  
Lagos, Nigeria  
+234 803 464 7754  
bismotglobalconcept@gmail.com

Nigerian Association of Law Teachers  
2012 NALT Conference

## Table of Content

|  |     |
|--|-----|
| Introduction   | v   |
| Law, Democratisation and Social Change in Nigeria<br>Professor Oyelowo Oyewo   | 1   |
| Economic Reform and Democratisation in Nigeria<br>Augustine Agom Ph.D   Abubakar Madaki Ph.D   Samuel Apinega Esq.   | 36  |
| Emerging Trends in Labour Law and Industrial Relations in Nigeria<br>Dr. A.B. Ahmed   Abubakar Aminu Ahmad   Nuhu Musa Idris   | 50  |
| Emerging Trends in Labour Law and Industrial Relations in Nigeria<br>Ochem Charles   Odiase Phillip  | 76  |
| Judicial Reform in a Democratising Nigeria<br>Prof. Abdul-Qadir Zubair   Dr. I.A. Abdulqadir   Dr. I.A. Yusuf<br>Dr. A.T. Shehu   Mr. M.K. Imam-Tamim   Mr. T.A. Abdulraheem | 96  |
| Institutionalisation of the Legislature in a Democratising State<br>Dr. Ifedayo Akomolede   E. M. Akpambang   O. A. Oniyinde   | 115 |
| Land Administration and Economic Development in Nigeria<br>A.A. Aina   E.A. Taiwo   O.O. Onakoya   | 143 |
| Land Administration and Economic Development in Nigeria<br>Professor Emeka Chianu  | 180 |
| Legal Education and Social Change in Nigeria<br>Sam Erugo, PhD   C.K. Nwankwo, Esq   Nath Ikeocha, Esq<br>Emeka Okoroafo, Esq  | 202 |
| Exploring Solid Minerals For Economic Growth<br>I.A. Olatunbosun, Phd   M.O. Adeleke   O.O. Ayorinde   | 223 |
| Electoral And Political Systems Reform And Democratisation In Nigeria<br>Professor O. O Oladele   Olaide A. Gbadamosi   R. J. Akomolafe                                      | 270 |
| Legal Education and Social Change in Nigeria<br>Abdurrasheed L Haruna   Magaji Chiroma   Dr. Muhammad A Abubakar   | 298 |

|   |     |
|---|-----|
| National Security, Terrorism and Development in Nigeria<br>Dr. Yusuf Mohammad Yusuf   Suleiman Usman Santuraki   Tijjani M Buba | 309 |
| A Critical Analysis of the Deregulation and Privatisation of the Electric<br>Power Sector in Nigeria<br>Dr. Jumoke Oduwole      | 325 |
| Communiqué  | 345 |

UNIVERSITY OF IBADAN LIBRARY



# LAND ADMINISTRATION AND ECONOMIC DEVELOPMENT IN NIGERIA\*

A.A. AINA | E.A. TAIWO | O.O. ONAKOYA

"Land is central to everyone's lives. We all have to live somewhere, even if it is not a permanent home."<sup>490</sup>

"It is evident that land occupies a central position in economic development in developing countries."<sup>491</sup>

## 1. Introduction

Land is the source of all material wealth,<sup>492</sup> and a crucial factor of production.<sup>493</sup> Economics and management studies have long established that production is dependent on four factors, out of which land is one, along with labour, capital and machinery. Land is central to everyone's lives.<sup>494</sup> From it we get everything that we use or value: food, clothing, fuel, shelter, metal, or precious stones. We live on the land and from the land, and to the land our bodies are committed when we die.<sup>495</sup>

---

\*A.A. Aina LLB, LLM (Unilag), BL; E.A. Taiwo LLB, LLM, MPhil (Ife), LLD (Nelson Mandela Metropolitan University, S.A.), BL and O.O. Onakoya LLB, LLM (Ife), BL. Lecturer, Faculty of Law, University of Ibadan, Ibadan, Nigeria. Being a paper presented on behalf of the Faculty of Law, University of Ibadan during the Nigerian Association of Law Teachers (NALT) Conference held at the University of Lagos, Akoka, Nigeria, 18-20 June, 2012.

<sup>490</sup> Bray, J., *Unlocking Land Law* (Hodder & Stoughton, London, 2004) 1.

<sup>491</sup> Nwabueze, B.O., *Nigerian Land Law* (Nwamife Publishers Ltd, Enugu, 1972) 619.

<sup>492</sup> Barnsley, D.G., *Barnsley's Conveyancing Law and Practice*, 3<sup>rd</sup> ed. (Butterworths, London, 1988) 3.

<sup>493</sup> Okany, M.C., *Nigerian Law of Property*, 2<sup>nd</sup> ed., (Fourth Dimension Publishers, Enugu, 2000) 693.

<sup>494</sup> Bray, *op. cit.* at 1. See also, Yakubu, M.G., "Principles of Property Law" in Ajomo, M.A. (ed.), *Fundamentals of Nigerian Law* (Nigerian Institute of Advanced Legal Studies, Lagos, 1989) 63.

<sup>495</sup> See Simpson, S.R., *Land Law and Registration* (Cambridge University Press: Cambridge/London/New York/Melbourne, 1976) 3. In this regard, Olagbaiye also posits: "[a]ll life depends on land, for people are born in hospitals, and homes are constructed on land. The only means of subsistence, namely food is cultivated on land. When people ultimately die, their remains are committed to land. Usually, life's basic needs are expressed to be food, clothing and shelter but it is true to assert that there is only one essential or basic need of life and that is land because food, clothing and shelter are entirely derived from land." See Olagbaiye, T., "Statutory Regulations of the Environment- An Appraisal of the Lagos State Environmental Sanitation Edit. 1985" in Omotola, J.A. (ed.), *Environmental Laws in Nigeria Including Compensation* (Faculty of Law, University of Lagos, 1990) 1. The biblical account also attests to the importance of land. For instance, Genesis 1:11-12 states: "[t]hen God said, 'let the land produce

Since time immemorial, people depended on property asset for survival and social status,<sup>496</sup> and these are gotten from land. Land is a class of property categorised as real property.<sup>497</sup> The centrality of land to human society is indisputable.<sup>498</sup> Land, down the ages has been the greatest asset in many African societies, especially in Nigeria.<sup>499</sup> Given that land resources have major historical, cultural and spiritual significance, it always generates a source of conflict and contestation in any society.<sup>500</sup>

It is not a coincidence that food, shelter and clothing believed to be the three essentials that sustain mankind, also have some linkage to land. Food grows out of land while shelter is affixed to it, and man's clothing is made largely from what grows out of land. Indeed, whether in ancient times or today's modern system, land constitutes a significant index for human's wealth, and as economic activities have assumed more sophistication over time, land has continued to play a central role in their development.<sup>501</sup> Without land, one cannot have access to adequate housing.<sup>502</sup> Land is intrinsically connected to the economic development and well-being of any nation.<sup>503</sup> No government can engage on any developmental project without land and very few people can claim to have nothing to do with land.<sup>504</sup> Land also provides a sense of security in contexts where formal employment opportunities and access to resources are limited.

---

vegetation: seed-bearing plants and trees on the land that bear fruit with seed in it, according to their various kinds.' And it was so. The land produced vegetation: plants bearing seed according to their kinds and trees bearing fruit with seed in it according to their kinds. And God saw that it was good." Also, in Gen. 1:24, it states further, "[a]nd God said, 'let the land produce living creatures according to their kinds: livestock, creatures that move along the ground, and wild animals, each according to their kinds.' And it was so." (NIV).

<sup>496</sup>de Bois, F. *et al.*, *Wille's Principles of South African Law*, 9<sup>th</sup> ed., (Juta & Co., Cape Town, 2007) 408.

<sup>497</sup> See Taiwo, E.A., *The Nigerian Land Law* (Ababa Press Ltd, Ibadan, 2011) 6; see also, Megarry, R. & Wade, H.W.R., *The Law of Real Property*, 5<sup>th</sup> ed., (Stevens & Sons, Ltd., London, 1984) 10. The word "property" includes any asset with a monetary value in an estate or patrimony. It thus comprises both corporeal, or material, objects like land, houses and motor vehicles and incorporeal, or immaterial, object like personal rights, shares in a company and patent rights. In this sense, patrimonial law comprises not only the law relating to corporeal things, but also the law of succession, the law of immaterial or industrial property and the law of obligation. See de Bois, *et al.*, *op. cit.*, at 409.

<sup>498</sup> See Banire, M.A., *Land Management in Nigeria: Towards a New Legal Framework* (Ecowatch Publications (Nig) Ltd, Lagos, 2006) 1.

<sup>499</sup> Olujede, P.A.O., *Nigerian Conveyancing Practice, Drafting and Precedents* (Heinemann Educational Books (Nig.) Plc, Ibadan, 1994) 247.

<sup>500</sup> In this regards, Johnson submits, "[t]here is no subject in which man is more sensitive than in that of land. Those normally quiet and submissive people can be roused into violent action of desperation if they perceived that it is intended to deprive them of their land." See Johnson, S., *The History of the Yorubas* (CSS Ltd, Lagos, 2001) 96.

<sup>501</sup> Babalakin & Co., "Key Constraints to Real Estate Development in Nigeria" Available at <http://www.babalakinandco.com> (accessed on 24/05/2012) 1-9 at 1.

<sup>502</sup> See Holness, W., "The Right to Property" in Govindjee, A. & Vrancken, P. (eds.), *Introduction to Human Rights Law* (LexisNexis, Durban, 2009) 217-229 at 217.

<sup>503</sup> Babalakin & Co., *op. cit.*, at 1.

<sup>504</sup> Olujede, *op. cit.*, at 247.



Thus, the availability of land is the key to human existence, and its distribution and use are, therefore, of vital importance.

Access to, and availability of land resources is critical to ensuring real and long-lasting improvement in social, economic and political well-being of a person. With Nigeria land area of about 923,768 Km<sup>2</sup> (over 92 million hectares), land is of immense importance in the country as a source of wealth and power.<sup>505</sup> In Nigeria, just like any other country, the amount and type of land available to households and communities are critical to food production, development, social security and stability. Given the above, the question of the use and ownership of, and access to land and related resources has always been at the centre of festering conflicts between ethnic groups and communities in Nigeria.

This paper is divided into seven parts. Following this introduction is the second part which defines the major terms namely, "land" and "economic development." Part three examines land Management and Administration in Nigeria while part four examines Nigeria's Economic Index. In part five, the paper examines the impacts of land management on Nigeria's Economic Development as well as the challenging issues. Part six discusses corruption as a major impediment to economic development in Nigeria while conclusion forms the last part.

## 2. Concepts and Definitions

Before embarking on the analysis of the main theme of this paper, it is apposite to define certain key terms and concepts. It is essential, however, to state categorically that precise definition of any legal concept is always an herculean task. Given that meanings or definitions of most legal terminologies always prove difficult and controversial, precise definition may, therefore, not be feasible in this paper. The problem of lack of accurate definition of any legal concept is generally acknowledged.<sup>506</sup>As Okunniga rightly pointed out, in the nature of law, when the question of definition of any legal concept is posed, fundamental differences of opinions

---

<sup>505</sup> See Bello, N.A., *Land Law and Conveyancing* (De Nab Publications, Abeokuta, 2007) iii.

<sup>506</sup> In this regard, Okunniga once submitted as follows: "Nobody, including the Lawyer, has offered, nobody, including the lawyer is offering, nobody, including the lawyer, will ever be able to offer a definition of law to end all definition. This is not advocating pessimism. It is because the nature of law makes it very pliable when it comes to the problem of definitions." See Okunniga, A.A.O., *Transplants and Mongrels and the Law: The Nigerian Experiment* (Inaugural Lecture Series 62 delivered at University of Ife, Nigeria on 17 May 1983) 1.



are bound to come into focus.<sup>507</sup> Meanings of the major terms namely, “land” and “economic development” as used in this paper are considered in the light of the above observation.

## 2.1. The Concept of Land

The natural division of physical property is into *land* or *immovable* and other objects known as *chattels* or *movables*. Property may also be classified as *real property* (land) and *personal property* (other types of property).<sup>508</sup> The pertinent question one may, therefore, pose at this stage is what is land? It should be stated categorically that the term “land”, as conceived by law, is fraught with controversies.<sup>509</sup> As such, the definition of “land” has long troubled lawyers and other academic writers.<sup>510</sup> Thus, a precise or an all-encompassing definition of the term may not be possible. In ordinary dictionary meaning, the word “land” means “the solid part of the earth surface, the ground.”<sup>511</sup> In legal parlance, meaning of land goes beyond this simple definition. In order to arrive at somewhat acceptable definition for our purpose, an examination of the various definitions of land as propounded by legal writers and scholars is necessary.

According to Burn, the term “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.”<sup>512</sup> It is, at times, used to denote “corporeal and incorporeal hereditaments.”<sup>513</sup> The Law of Property Act, 1925 (England) gives a very wide definition to the concept “land”. In terms of this Act, “land” includes:

“Land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or part of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a

---

<sup>507</sup>*Ibid.*

<sup>508</sup> Taiwo, *op. cit.*, at 6; see also, Okany, *op. cit.*, at 37-38; de Bois, *et.al.,op. cit.*, at 419-420.

<sup>509</sup> Utuama, A.A., *Nigerian Law of Real Property* (Shaneson C. I. Ltd: Ibadan, 1989) 4.

<sup>510</sup> Bray, *op. cit.*, at 1.

<sup>511</sup> See *Oxford Advanced Learner's Dictionary*, 7<sup>th</sup> ed. (Oxford University Press, 2006) 827; see also, Lloyd, P.C, *Yoruba Land Law* (Oxford University Press: London/New York/Ibadan, 1964) 13; *Salami v Gbodoolu* [1997] 4 NWLR (pt 499) 277 at 287, *per* Adio, JSC.

<sup>512</sup> See Burn, E.H, *Cheshire's Modern Law of Real Property* 12<sup>th</sup> ed. (Butterworths: London, 1976) 136; see also, Oluyede, *op. cit.*, at 247.

<sup>513</sup> Hereditaments signify a right that is heritable, i.e. capable of passing by way of descent to heirs; it means every kind of property that can be inherited. Corporeal hereditaments are visible and tangible objects such as lands and houses while incorporeal hereditaments are intangible (e.g. easements, *profit a prendre*), which may be enjoyed over or in respect of land. See Gray, K., *Elements of Land Law* (Butterworths & Co. (Publishers) Ltd, London, 1987) 16; see also, Simpson, *op. cit.*, at xlii; Burn, *op cit*, 136-137.

rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land..."<sup>514</sup>

According to Utuama, land may be defined as "the earth surface, subsoil, the air space above it, as well as things that are permanently attached to it."<sup>515</sup> The legal concept of land goes beyond the ground and its subsoil, but also includes all structures and objects, like buildings and trees standing on it.<sup>516</sup> This includes even abstract and incorporeal 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 person.<sup>517</sup> Thus, the term "land" includes not only the surface of the earth but also, the soil beneath the surface and the right to the air space above the surface; buildings and any chattels which have by sufficient attachment to the soil or to buildings, become fixtures;<sup>518</sup> natural crops (*fructus naturales*),<sup>519</sup> but not industrial growing crops (*fructus industriales*).<sup>520</sup>

The Nigerian Interpretation Act states that land includes "any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals."<sup>521</sup> In *Unilife Dev. Co. Ltd v Adeshigbin*,<sup>522</sup> the Supreme Court, *per* Achike, JSC, held that this "statutory definition is all embracing." It should be noted also that in terms of the provisions of the Nigerian Constitution, the Land Use Act, and the

<sup>514</sup> S 205(l) (ix). The Property and Conveyancing Law, Cap 100 LWN also follows this definition as in its section 2, defines land in the following words: "Land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land."

<sup>515</sup> Utuama, *op. cit.*, 4.

<sup>516</sup> See Nwabueze (1972), *op. cit.*, at 3.

<sup>517</sup> *ibid.*

<sup>518</sup> "Fixtures" is chattels which have been attached to the land or to a building in such a way as to be regarded by the law as part of the land. If a chattel becomes a fixture, it becomes the property of the land-owner and, in the absence of express exclusion; it passes on any transfer of the land. This rule applies even if the chattel was affixed by someone other than its owner or if it was affixed by one person on another's land. Chattels affixed to the land lose the character of chattels and pass with the ownership of the land on the maxim *quicquid plantatur solo, solo cedit*. See Burn, *op. cit.*, 138.

<sup>519</sup> *Fructus naturales* means the natural products of the soil, such as grass, timber, fruit from fruit trees, which do not require annual labour to produce a crop.

<sup>520</sup> Industrial growing crops (*fructus industriales*) on the other hand means such crops as corn and potatoes, requiring annual labour for their production are not regarded as part of the land. See Harwood, M., *English Land Law* (Sweet & Maxwell, 1975) 22-23; see also, Okany, *op. cit.*, at 75-76.

<sup>521</sup> Sec. 18 of the Interpretation Act, Cap 123, LFN, 2004 (Nigeria); see also, sec. 2 of the Property and Conveyancing Law, Cap 100, Laws of Western Nigeria, 1959 which defined land to include "...land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any way), and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land."

<sup>522</sup> [2001] 4 NWLR (pt. 704) 609 at 625.



Petroleum Act, the ownership of mineral deposits in or over land is vested in the Federal Government of Nigeria.<sup>523</sup> Nigerian legal scholars such as Olawoye and Nwabueze also defined land in the context defined by the Interpretation Act. According to Olawoye, "land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds..."<sup>524</sup>

In its section 2, the Property and Conveyancing Law<sup>525</sup> defines land to include "...land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any way), and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land." In the same vein, the Land Development (Provision for Roads) Law of Lagos State<sup>526</sup> defines land as including "any estate or interest in land."

Going by the various definitions of land considered above, the maxim of the English Common Law of "*quicquid plantatur solo solo cedit*" which literally means that "whatever is affixed to the soil belongs to the soil" is applicable to the definition of land in Nigeria.<sup>527</sup> By this maxim, both the natural contents which include the surface of the earth and the subsoil and things which grow on it, as well as the artificial contents in the form of buildings and other permanent fixtures, will generally belong to the owner of the land.<sup>528</sup>

Writing on the Yoruba Family Property, Coker submits that "[l]and in any application of the term includes buildings thereon. The maxim *quicquid plantatur solo solo, cedit* which is a maxim of most legal systems, is also a part of Yoruba native law and custom."<sup>529</sup> In contrast, Lloyd posits that Yoruba customary law has no concept of the distinction, known to English law, between real and personal property or between movable and

<sup>523</sup> See sec. 1, of the Petroleum Act, Cap P10, LFN, 2004; see also, sec 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides: "[n]otwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly." See also, section 28(2)(c) & (3)(b) of the Land Use Act, 1978.

<sup>524</sup> See Olawoye, C.O., *Title to Land in Nigeria* (Evans Brothers Ltd, 1974) 9; Nwabueze (1972), *op. cit.*, 3.

<sup>525</sup> Cap 100, Laws of Western Nigeria, 1959.

<sup>526</sup> Cap L.57, Laws of Lagos State, 2003.

<sup>527</sup> See *Otagbolu v Okeluwa & Others* (1981) 6-7 S.C. 99, where the Supreme Court affirmed it that the structure constructed on the plaintiff's land by a trespasser belonged to the owner of the land on the principle of *quicquid plantatur solo solo, cedit*. See also, Nwabueze, *op. cit.*, at 4.

<sup>528</sup> See Tobì, N., *Cases and Materials on Nigerian Land Law* (Mabrochi Books: Lagos & Azigbo, 1997) 9.

<sup>529</sup> See Coker, G.B.A., *Family Property among the Yorubas* (Sweet & Maxwell, 1966) 45 & 46.



immovable property.<sup>530</sup> He asserts that the Yorubas do not recognize a legal distinction, for instance, in the sense that different rules of inheritance apply to different types of object.<sup>531</sup> According to him. "[t]hey [Yorubas] are of course conscious that the physical nature of objects will always affect the manner in which they are shared in inheritance-land is permanent, money is easily divisible, while a gown or the right to a title is not."<sup>532</sup>

The above view, Obi also shared with Lloyd, according to Obi, land under African customary law does not include things standing on it, whether they are houses or economic trees.<sup>533</sup> However, this view is not applicable in our context as it does not represent the legal meanings of land. Lloyd himself admits that his writing was as an anthropologist. He submits: "...I write as an anthropologist and not as a lawyer. My research methods have been those of the anthropologist..."<sup>534</sup> As earlier pointed out, in its original definition under the English law, land is not regarded as comprising merely the surface; it is deemed to include everything which is fixed to it, and also the air which lies above it, right up into the sky, and whatever lies below it, right down into the centre of the earth.<sup>535</sup>

It is submitted that the above attempt at considering the various definitions of land by legal writers and scholars is necessary and not just an academic exercise given that the distinction between *what is* and *what is not* land is always significant because a number of important rules and rights depend on this classification. They include the following: (a) any contract for the sale of land needs to be evidenced in writing; (b) a contract for the sale of land and conveyance of land will automatically include everything which is part of the land unless expressly excluded; (c) the person who owns the surface of the land is presumed to own also whatever in law is part of the land; (d) where a person attaches a chattel to the land so that it becomes a fixture, it automatically becomes the property of the landowner and passes with the land.<sup>536</sup>

Although land is regarded as a commodity capable of being owned, bought and sold like any other commodities, however, two main characteristics distinguish it from all other commodities known to commerce.<sup>537</sup> The first and the most obvious one is that it is immovable, and as such, it cannot be physically transferred from one person to another. It cannot be possessed in the same way as something that can be actually handled and

---

<sup>530</sup>Lloyd, *op cit*, 13.

<sup>531</sup>*Ibid*.

<sup>532</sup>*Ibid*.

<sup>533</sup> See Obi, C., *Thelbo Law of Property* (Butterworths, London, 1963) 32.

<sup>534</sup> See Lloyd, *op cit.*, at 8.

<sup>535</sup> This is expressed in the legal maxim, "*cujus est solum ejus usque ad coelum et ad inferos.*" See Simpson, *op. cit.*, 5.

<sup>536</sup> See Harwood, *op. cit.*, 21-22.

<sup>537</sup> See Simpson, *op. cit.*, 5.

moved about.<sup>538</sup> Secondly, it is everlasting. This means that it is permanent; it cannot be increased, decreased or destroyed (in the real sense of these words) as can all other forms of wealth.<sup>539</sup> Having defined land, the next important thing is to examine, howbeit, briefly, the words "economic development" as used in this paper.

## 2.2. Economic Development

Development means different things to different people; it is also described as a problematic concept.<sup>540</sup> Development has been used in many different ways including political, economic and social. In other words, development is a construct of many applications.<sup>541</sup> It involves harnessing of the resources for the realization of their major objectives, solving their major problems.<sup>542</sup> This means that development consists of activities required in improving the attitudes and potentials of people. In this context, it is described as the process aimed at improving the living conditions and circumstances of human beings both directly and indirectly.<sup>543</sup>

The term "development" also means growth, that is, the situation when something grows or changes and becomes more advanced.<sup>544</sup> Development also encompasses carrying out of any building, engineering, mining or other operations in, or over or under any land, or the making of any environmentally significant change in the use of any land or demolition of buildings including the felling of trees and the placing of free standing erections used for the display of advertisements on the land. Talking of national development in the light of the various ways in which the term development may be put, national development encompasses social, economic, cultural and political development. In other words, the components of national development include social

---

<sup>538</sup>*ibid.*

<sup>539</sup>*ibid.* In this regards, Green posits: [e]xcept in the rare cases of land falling into or being thrown up by the sea, it is geographically fixed (you cannot move it about) it is also, ultimately indestructible." See Green, K., *Land Law* (Macmillan, London, 1993) 6; see also, Banire, M.A., *Land Management in Nigeria: Towards a New Legal Framework* (Ecowatch Publications (Nig) Ltd, Lagos, 2006) 7.

<sup>540</sup>Abdul-Raheem, Y., "Globalization and Nigerian Economic development" Being the text of a paper presented at the 4th Annual National Conference of the Social Studies Association of Nigeria (SOSAN) (Held at the Faculty of Education, University of Ibadan, Ibadan, 2003) 1-11 at 5.

<sup>541</sup>*ibid.*

<sup>542</sup>*ibid.*

<sup>543</sup>*ibid.*

<sup>544</sup> See *Cambridge Advanced Learner's Dictionary*, 3<sup>rd</sup> ed., (Cambridge University Press, Cambridge, 2008) 385.



development, *economic development*, political development and cultural development.<sup>545</sup>

In this paper, we are concerned with economic development. The word "economic" relates to trade, industry and money.<sup>546</sup> Juxtaposing the two words "economic" and "development", the term "economic development", therefore, refers to the improvement in the general standard of living of the people of the society. It refers to the attainment of ideals of modernization such as the rise in productivity, social and economic equity, improved institution and values. This means that economic development is concerned with the improvement in the quality of life of the people.<sup>547</sup> In the ordinary sense of the word, "economic development" refers to the quantum of growth in the country; it also embraces the impact of economic activities on the quality of life of the people. It refers to trade, industry and commercial growth in a particular country.

It should be noted that growth and prosperity of an economy are central to the long-term reduction in poverty for both economic and environmental sustainability. For Nigeria to attain socio-economic development, her land resources must be well managed and put into full utilization. Every Nigerian must ensure that his or her landed property is judiciously used for the purpose of wealth creation and empowerment. The next issue that calls for our consideration is how does the land administration impacts (either negatively or positively) on the economic development in Nigeria? But, before making this assessment, it would be necessary to examine land management, control and administration in Nigeria. By land administration, we mean the process of determining, recording and disseminating information about ownership, value and use of land. A good land administration system aims at equitable distribution of wealth to encourage economic growth and development.

### 3. Control, Management and Administration of Land in Nigeria

In legal jurisprudence, an owner of property has the right of its possession, use and enjoyment, management and control, among others.<sup>548</sup> The history of Nigerian land tenure system is that of a mixed story, however, the nature of the topic at hand will only permit a brief analysis of the history of the Nigerian land tenure system. Suffice it to say

<sup>545</sup>Abdul-Raheem, *op. cit.*, at 5. Emphasis added.

<sup>546</sup> See *Cambridge Advanced Learner's Dictionary, op. cit.*, at 447.

<sup>547</sup>Abdul-Raheem, *op. cit.*, at 5.

<sup>548</sup> See Utuama, A.A., "The Use of Trusts in the Management of Property: problem and Prospects" in Utuama, A.A. & Ibru, G.M., (eds.), *The Law of Trusts and their Uses in Nigeria* (Malthouse Press Ltd, Lagos, 2004) 37-49 at 37.



that in Southern Nigeria, under customary law, land was organized largely around the community and the family. The individual could rarely lay claim to any part of it as owner and, therefore, could not alienate it without the consent of the community or family head.<sup>549</sup> This land tenure system was, however, whittled down following the introduction of received common law principles during the colonial period.<sup>550</sup> In Northern Nigeria the situation was a bit different as land was held and administered for the use and common benefit of the people who held a right of occupancy over it and such rights were subject to the control and disposition of the native authority.<sup>551</sup>

The history of State ownership of land in Nigeria can be traced to the 1861 Treaty of Cession which ceded the Colony of Lagos to the British Crown, subject to the customary rights of the local people. Consistent with the economies of industrialised nations, the colonial government in Nigeria needed land for developmental purposes, specifically for agriculture and industrialization. As land at that time was vested in the communities and families, government was forced to compulsorily acquire the lands from them and today we have a rash of acquisition statutes in Nigeria beginning with the Public Land Acquisition Act, 1917 through to the Public Land Acquisition Act, 1976. The various Region/States also have their separate Public Land Acquisition Laws.<sup>552</sup>

Nominally, during the colonial time up till the 1963, land was vested in the Queen, and when Nigeria became a Republic in 1963, it was vested in the Federal Government. In actual sense, land was generally vested in communities and families in the South, while in the North, land was vested in native authorities for the use and benefit of the people.<sup>553</sup> This was the position with the Nigerian land tenure system up till March, 1978 when the Land Use Act was promulgated. The Act is a major and radical piece of legislation that governs title, ownership and enjoyment of land in Nigeria.<sup>554</sup>

The Act was enacted to bring about uniformity in Nigeria's land tenure system, ensuring that land is available for agricultural and industrial development, and importantly, addressing the country's socio-economic problems. In this regard, Yakubu observed, the

---

<sup>549</sup> See *Amodu Tijani v. Secretary Southern Nigeria* (1921) the court held that "the notion of individual ownership is quite foreign to native law. Land belongs to the community, village, or family, never to the individual owners; this is again due to introduction of English law."

<sup>550</sup> *Babalakin & Co., op. cit.* at 1-2.

<sup>551</sup> *ibid* at 2.

<sup>552</sup> See in this regard, the Public Land Acquisition Law, Cap 105 of Western Region, 1959; see also, *Babalakin & Co., op. cit.* at 2.

<sup>553</sup> See generally, James, R.W., *Nigerian Land Use Act: Policy and Principles* (University of Ife Press, Ile-Ife, 1987) 7-13; Owolabi, K.A., "Land Use Act: Why Does a Therapy Become a Pathology? (2011) 1(1) *University of Ibadan law Journal* 257- 282 at 262.

<sup>554</sup> Nwabueze, Remigius, N., "Equitable Bases of the Nigerian Land Use Act" (2010) 54(1) *Journal of African Law* 119-142 at 119.

consequences of the population pressure, urbanisation and socio-economic growth had great social and economic impact on land issues in Nigeria.<sup>555</sup> Modernisation saw people moving from rural areas into urban centres where modern facilities are available. Population pressure in cities and towns made residential accommodation in particular, a problem in those centres.<sup>556</sup> The congested urban areas were in need of expansion but land where this expansion was to be made was scarce.<sup>557</sup> Also, the growth of Nigerian economy due to the discovery of oil made a large number of people rich enough to build better houses and maintain large farms and contributed to high demand for land in urban areas.

Due to robust economy with oil boom in the 70s, heavy and large industries were established and thus, bringing about more demand for land and increased the exodus of people from rural to urban areas.<sup>558</sup> The guarantee of a piece of land to everyone was a problem.<sup>559</sup> For government as well, land became so expensive and acquiring land for public purposes became very difficult and sometimes even impossible because of the high cost of compensation.<sup>560</sup>

Given these problems, it then became apparent that the Government had to do something about land distribution in the country.<sup>561</sup> Thus, the Rent Control Panel appointed in 1976 to study the system of land distribution and speculation recommended, *inter alia*, that the Federal Military Government should take over all undeveloped land in the country.<sup>562</sup> Similarly, the Constitution Drafting Committee (CDC) set up in January, 1976 to prepare the 1979 Nigerian Constitution strongly recommended the nationalisation of all undeveloped lands in Nigeria to allow the landless a land for shelter and sustenance.<sup>563</sup>

Consequently, the Federal Government decided to act by looking into the land problem in the country. Thus, in June 1977, the Government set up the Land Use Decree Panel with the following terms of reference: (i) to undertake an in-depth study of the various land tenure, land use, and land conservation practices in the country and recommend steps to be taken to streamline them; (ii) to study and analyse all the implications of a

---

<sup>555</sup> Yakubu, M.G., *Notes on the Land Use Act* (A.B.U. Press Ltd, Zaria, 1986) 9.

<sup>556</sup> *Ibid*.

<sup>557</sup> *Ibid* at 9; see also, Nuhu, M.B., "Public Land Policy, New Trends: Challenges in Nigerian Institutional Frameworks for State and Public Sector Land Management" FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, (September 9-10, 2008) 1-23 at 3.

<sup>558</sup> Yakubu, *op. cit.*, at 9.

<sup>559</sup> Yakubu, *op. cit.*, at 9.

<sup>560</sup> *Ibid*; see also, Oluyede, *op. cit.*, at 324.

<sup>561</sup> See Oluyede, *op. cit.*, at 324.

<sup>562</sup> Yakubu, *op. cit.*, at 10.

<sup>563</sup> *Ibid* at 10.



uniform land policy for the country; (iii) to examine the feasibility of a uniform land policy for the entire country, make necessary recommendations and propose guidelines for implementation; (iv) to examine steps necessary for controlling future land use and also open and develop new land for the needs of government and Nigeria's population in both urban and rural areas, and to make appropriate recommendations.<sup>564</sup> The reports of the Panel culminated in the enactment of the Land Use Decree, 1978.<sup>565</sup>

Four main objectives have been identified as the reasons for enacting the Act, and they are: (a) to remove the bitter controversies resulting at times in loss of lives and limbs, which land was known to be generating;<sup>566</sup> (b) to streamline and simplify the management and ownership of land in the country; (c) to assist the citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life; and (d) to enable the government to bring under control the use to which land can be put in all parts of the country and thus, facilitating planning and zoning programmes for particular uses.<sup>567</sup> In *Ibrahim v Mohammed*,<sup>568</sup> the Supreme Court emphasised that the Land Use Act was promulgated as a whole with a view to making land available to all Nigerians irrespective of where they live.

The Act nationalises all land in Nigeria;<sup>569</sup> it sets out a legal framework for a national land policy in the country.<sup>570</sup> It is submitted that nationalisation is intended to accomplish two purposes namely, state ownership of all land and management and control of land by government.<sup>571</sup> State ownership results from: (i) the vesting of all land in the State and;<sup>572</sup> (ii) making a right of occupancy the largest interest capable of

<sup>564</sup> James, *op. cit.*, at 26-27; Olujede, *op. cit.*, at 324; Okany, *op. cit.*, at 695-698.

<sup>565</sup> The Act was enacted as a military decree and it came to force on 29 March, 1978. The decree assumed the appellation of an Act in 1980 through the Adaptation of Laws, (Re-designation of Decrees, etc.) Order of 1980. See secs 1 & 13 of the Adaptation of Laws, (Re-designation of Decree, etc.) Order, 1980. The basic philosophy of this Act is evident in its Preamble which states: "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 right 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 assured, protected and preserved."

<sup>566</sup> Land, which is one of the factors of production, has become a factor for constant litigation, bickering, attacks, deaths and violence in different communities in Nigeria.

<sup>567</sup> See Omotola, J.A., *Essays on the Land Use Act, 1978* (Lagos University Press, 1984) vi.

<sup>568</sup> (2003) 17 WRN 1.

<sup>569</sup> Nwabueze, B.O., *Military Rule and Social Justice in Nigeria* (Spectrum Law Publishing, Ibadan, 1993) 274.

<sup>570</sup> James, *op. cit.*, at 1.

<sup>571</sup> Nwabueze, (1993), *op. cit.*, at 274.

<sup>572</sup> It vests the management, control and administration of land in Nigeria in the respective States of the Federation and the Local Governments Areas in which the lands are located. Section 2(1) of the Act provides: "[a]s from the commencement of this Act, (a) all land in urban areas shall be under the control



existing in land in favour of a private person or body.<sup>573</sup> It should be emphasised that the Land Use Act is a legislation which has come to effect changes mainly in redefining the quantum of interest a person, who hitherto was registered as a *fee simple* owner can hold in land.<sup>574</sup> The effect of nationalisation under the Act is that all land in the country is now State land.<sup>575</sup>

When the Act was promulgated on 29 March, 1978, it received mixed feelings and reactions from various individuals, organisations and institutions in the country. While many, particularly, Trade Union leaders, workers and other individuals strongly favoured the Act, many others, particularly, the traditional rulers criticised it as depriving them of their tradition and property.<sup>576</sup> They described the Act as “a powerful instrument aimed at completely abolishing the sacred institution of kingship especially in the southern part of Nigeria where land had been closely associated with the institution from time immemorial.”<sup>577</sup> They opposed the Act and called for its abrogation.

On the other hand, workers and individuals saw the Act as highly acceptable and believed that with the Act in place, they could now apply for land to build their own houses without having to purchase land at exorbitant prices from land speculators.<sup>578</sup> For instance, the then President of the Nigerian Labour Congress described the new land policy as “the wisest measure even taken by the Government.”<sup>579</sup> But the pertinent question is this: how far has the Act achieved its stated objectives? What impact has the Act had on the Nigerian economic development? All these issues, and many more, will be discussed shortly.

Section 1 of the Act vests the title of land comprised in the territory of each State in the Governor of the State to be held in “trust” and be administered for the benefit of every Nigerian. The exact import of the provision of section 1 of the Act has attracted divergent interpretations from judicial authorities and learned writers. It has been suggested that that the word “vest” in the provision implies the vesting of ownership in the State Government.<sup>580</sup> It is important to note, however, that the provision of section 1 of the Act

---

and management of the Governor of each State; and (b) all other land shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.” See also, Okany, *op. cit.*, at 512.

<sup>573</sup>Nwabueze, (1993), *op. cit.*, at 274.

<sup>574</sup>Omotola, J.A., *Possession of Land* (Florence & Lambard Books, Lagos, 1994) 98; see also, Egwummuo, J.N., *Modern Law and Practice of Conveyancing* (Academic Publishing Co., Enugu, 2005) 241.

<sup>575</sup>Nwabueze, (1993), *op. cit.*, at 275.

<sup>576</sup>Yakubu, *op. cit.*, at 11.

<sup>577</sup>*Ibid*, at 11.

<sup>578</sup>*Ibid*, at 12.

<sup>579</sup>*Ibid*; see also, Taiwo, *op. cit.*, at 204.

<sup>580</sup>Abugu, U., *Principles of the Land Use Act, 1978* (Joyce Graphic Printers & Publishers, Kaduna, 2008) 13.

is prefaced by the expression "subject to the provision of this [Act]..." This qualification indicates that there were some lands in each State which were not intended to be vested in the Governor of the State.<sup>581</sup> One of such exceptions is all land which immediately before the commencement of the Act was vested in the Federal Government and its agencies.<sup>582</sup>

It should be emphasised that a governor is not beneficially entitled to the land so vested in him, but he is only a "trustee" of the land for the benefit of all Nigerians in that State. In this regards, he holds only nominal ownership of land because a settled principle of law dictates that a trustee is not the real owner of a trust property but only has control and holds nominal title in the land for the purpose of accomplishing the objectives of a particular trust. Thus, the effect of this submission is that Governors are vested with the bare title to land to the extent that may be necessary for them to administer the land within the territories of their respective States for the purpose of achieving the objectives of the Act.<sup>583</sup>

To ensure an effective control and management of land, the land vested in the Governor is by section 3 of the Act zoned into urban and non-urban lands.<sup>584</sup> Section 2(2) of the Act establishes in each State, a body known as the "Land Use and Allocation Committee."<sup>585</sup> The Committee has the responsibilities of: (a) advising the appropriate authority on any matter connected with the management of land to which section 2(1)(a) of the Act relates; (b) advising the appropriate authority on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and (c) determining the disputes as to the amount of compensation payable under this Act for improvement on land.<sup>586</sup> For each local

<sup>581</sup>James, *op. cit.*, at 31.

<sup>582</sup>In this regard, sec. 49 of the Act provides: "[n]othing in this Act shall affect any title to land whether developed or underdeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned." See also, Abugu, *op. cit.*, at 16.

<sup>583</sup>See Utuama, *op. cit.*, at 119; Taiwo, *op. cit.*, at 206.

<sup>584</sup>See *Salati v Shehu* [1986] 1 NWLR (pt 15) 210; *Yahaya Yari v Ahmed Shehu Ibrahim* [2002] 5 NWLR (pt 761) 587 at 617; *Chindia v Amadi* (2002) 11 WRN 72 where the Court of Appeal states how the classification of land as urban or rural should be determined.

<sup>585</sup>This Committee consists of such a number of persons as the governor may determine and shall have in its membership: (i) not less than two persons possessing qualifications as estate surveyors or land officers of not less than five years standing, and (ii) a legal practitioner.

<sup>586</sup>It should be pointed out that sec 47(2) of the Act oust the jurisdiction of the court on the issue concerning the amount or adequacy of compensation payable. It provides: "[n]o court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act." It is submitted that section 47(2) constitutes an ouster clause which is a derogation of the fundamental right of access to court. In terms of the current Constitution, this provision is void and cannot stand. See ss 1(1) & (3), 6 (6)(b) & 36(1) of the CFRN,



government, the Act also establishes a body to be known as “the Land Allocation Advisory Committee” which shall consist of such persons as may be determined by the Governor acting after consultation with the local government and shall have responsibility for advising the local government on any matter connected with the management of land in non-urban area.<sup>587</sup>

To ensure security of title and adequate management and control of land nation-wide, the Act introduces two types of right of occupancy. A right of occupancy granted by the Governor which is called the Statutory Right of Occupancy (SRO) and a right of occupancy granted by the local government called the Customary Right of Occupancy (CRO). The right of occupancy is, therefore, considered next.

### 3.1. The Right of Occupancy under the Act

Section 50 of the Act defines the statutory right of occupancy as a right of occupancy granted by the governor under the Act while customary right of occupancy is defined as the right of a person or community lawfully using or occupying land in accordance with customary law and, it includes a customary right of occupancy granted by a local government under the Act. However, in terms of section 5(1)(a) of the Act, “[i]t shall be lawful for the Governor in respect of land whether or not in an urban area to grant statutory rights of occupancy to any person for all purposes.”<sup>588</sup>

From this provision, the power of the Governor to grant statutory right of occupancy is not limited to land in urban area, he may as well grant a statutory right of occupancy in respect of the land designated as non-urban area. It is submitted that the determining factor as to whether a right is statutory right of occupancy or a customary right of occupancy is not the location of the land (urban or non-urban area), but the *status of the person* who grants the right of occupancy. The Act empowers the local government to grant customary rights of occupancy in respect of land not in an urban area to any person or organisation for agricultural, or for other purposes ancillary to agricultural

---

1999; see also, *Prince Kolawole Mustapha v the Governor of Lagos State* [1987] 2 NWLR (pt 58) 552; *Garba v Federal Civil Service Commission* [1988] 1 NWLR (pt 71) 449.

<sup>587</sup> See sec 2(5) of the Act.

<sup>588</sup> The power of the governor to grant a statutory right of occupancy under s 5(1) of the Act was emphasized by the Supreme Court in its decision in *Dabo v Abdullahi* (2005) 29 WRN 1. See also, *Anthony v Governor of Lagos State & Anor* [2003] 10 NWLR (pt 828) 288 at 304; *Olagunju v Adesoye* [2009] 9 NWLR (pt 1146) 225 at 265 (SC); see also, *Teniola v Olohunkan* [1999] 5 NWLR (pt 602) 280; *Gankon v Ugochukwu Chemical Industries Ltd* [1993] 6 NWLR (pt 297) 55.



purpose such as grazing, residential and other purposes.<sup>589</sup> A right of occupancy under the Act may either be “granted” or “deemed” issued.<sup>590</sup>

The person entitled to a right of occupancy is called a holder, and a holder may be sole (individual) or group.<sup>591</sup> When a right of occupancy is granted, the occupier or holder of such a right shall have exclusive right to the land against all persons other than the governor.<sup>592</sup> A right of occupancy may be granted for a definite term in accordance with the provision of section 8 of the Act which states that “[s]tatutory right of occupancy granted under the provisions of section 5(1) (a) of this Act shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of this Act.”

### 3.2. Land Transactions and the Issue of Consent

Another way to ensure security of title and to control the use and manage the land is the requirement of consent of the governor. In this regard, Omotola rightly posited, by requiring the consent of the governor to such transfers, it will be possible to control and regulate them and with proper records of all transfers being kept.<sup>593</sup> Section 22 of the

<sup>589</sup> See s 6(1) of the Act.

<sup>590</sup> This means that the right may be acquired by express provisions of the Act or by operation of the law. Right of occupancy, either statutory or customary is granted or acquired expressly by virtue of sections 5(1)(a) & 6 (1)(a)&(b) of the Act. S 1(5)(a) states: “[i]t shall be lawful for the governor in respect of land, whether or not in an urban area- (a) to grant statutory rights of occupancy to any person for all purposes.” S 6(1)(a) & (b) states: “[i]t shall be lawful for a Local Government in respect of land not in an urban area- (a) to grant customary rights of occupancy to any person or organization for the use of land in the local government area for agricultural, residential and other purposes; (b) to grant customary rights of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned.” A right of occupancy is deemed issued or by operation of the Act by virtue of sections 34 and 36 of the Act among others. Section 34(2) of the Act provides thus: “[w]here the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act.” Section 34(5) of the Act contains provision in respect of undeveloped land. This provision is not limited to urban land. Provisions in respect of non-urban area for both developed and undeveloped land are contained in sections 36(4) and section 36(1) & (2) of the Act respectively.

<sup>591</sup> See s 29(3) of the Act; see also, *Ojeme & Ors v Momodu II, Ogirrua of Irrua & Ors* (1983) 3 SC 173 at 187.

<sup>592</sup> See s 14 of the Act which provides: “[s]ubject to the other provisions of this Act and of any laws relating to way-leaves, to prospecting for minerals or minerals oils or to mining or to oil pipelines and subject to the terms and conditions of any contract made under section 8 of this Act, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Governor.”

<sup>593</sup> See Omotola (1984), *op. cit.*, at 26.

Act provides that “[i]t shall not be lawful for a holder of a statutory right of occupancy granted by the governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the governor first had and obtained...”<sup>594</sup>

In terms of the Act, both the statutory and customary rights of occupancy are transferable but subject to consent requirement. The provision does not say that right or a right of occupancy is not transferable. It only requires conveyancers to ensure that “both the underlying transaction as well as the instrument” giving effect to it are in accordance with the statutory provision.<sup>595</sup> It is submitted that the rule that the consent of the governor or that of the local government must be first had and obtained before any transfer of right over land is the most potent provision of the Act which enhances security of title. The issue of consent has received much judicial confirmation.<sup>596</sup>

It should be noted that section 22 of the Act provides for some exceptions namely, (a) the creation of legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the governor; and (b) the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the governor. In the two instances mentioned above, consent of the governor is not necessary. It is important to note also that improvement made on land comprised in a statutory right of occupancy cannot be alienated by a holder without prior consent of the governor.<sup>597</sup>

Lack of the appropriate consent where consent is required may lead to revocation of the right of occupancy.<sup>598</sup> Lack of consent may also make the transaction unlawful and illegal; it also makes it an offence punishable with fine or imprisonment.<sup>599</sup> In the same vein, section 26 provides that “[a]ny transactions or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance

<sup>594</sup> See also, sec 21 which provides as follows: “[i]t shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever – (a) without the consent of the governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable sheriffs and civil process law; or (b) in other cases without the approval of appropriate local government.” See further, *Savannah Bank Ltd v Ajilo*, [1987] 2 NWLR (pt 57) 421.

<sup>595</sup> Oluyede, *op. cit.*, at 2

<sup>596</sup> See *Federal Mortgage Bank of Nigeria v Dr Elisha Bamidele Babatunde* [1999] 12 NWLR (pt 632) 683 at 689; *Savannah Bank Of Nigeria Ltd v Ajilo* (supra); *Olalomi Industries Ltd v Nigerian Industrial Development Bank Ltd* [2009] 16 NWLR (pt 1167) 266 at 292-293 & 301 (SC); *Union Bank of Nigeria Plc v Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567.

<sup>597</sup> See sec 15(b) of the Act.

<sup>598</sup> See sec 28 (2)(a) & (3)(d) of the Act.

<sup>599</sup> See generally, secs 21, 22, 23 34 (5), (6) & (7) (8), and sec 36(2), (4) & (6) of the Act.



with the provisions of this Act shall be null and void.”<sup>600</sup> Thus, in *Savannah Bank Of Nigeria Ltd v Ajilo*,<sup>601</sup> the Supreme Court held that all transactions under which an interest in land is being transferred require the government’s approval for their validity. The duty to procure consent for the transfer of statutory or customary right of occupancy is that of the holder of such rights.<sup>602</sup> Before examining the impact of the Land Use Act as well as land management on the Nigeria’s economic development, it would be necessary to first consider Nigeria’s economic index. This is considered in the next part.

#### 4. Nigeria’s Economic Index

It is submitted that government-led-development was the ruling economic development paradigm in Nigeria up to the 1980s. Under this paradigm, the private sector was a passive partner in development while the public sector dominated all other sectors of the economy- agriculture, commerce, services, (especially, transportation) industry, etc.<sup>603</sup> This has changed with public-private partnership policy of the federal government. Industrialisation plays a significant role in the Nigeria’s economic development. Industrialisation in the world over acts as a catalyst that accelerates the pace of structural transformation and diversification of economic, enable a country to fully utilize its factor endowment and to depend less on foreign supply of finished goods or raw materials for its economic growth, development and sustainability.<sup>604</sup>

The challenges confronting the Nigerian economy in the current Century are diverse and enormous. The unacceptable state of Nigeria’s economy is most galling given Nigeria’s enormous endowments of natural and human resources.<sup>605</sup> The major causes of the decline in Nigeria’s economic fortunes have been attributed to political instability and bad governance, most especially in the 1990s. For many decades, military rule in Nigeria led to economic and social stagnation and decline. Similarly, the advent of an

<sup>600</sup>See *Olalomi Industries Ltd v Nigerian Industrial Development Bank Ltd* [2009] 16 NWLR (pt 1167) 266 at 292-293 & 301 (SC); *Union Bank of Nigeria Plc v Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567 at 584.

<sup>601</sup>*Supra*.

<sup>602</sup> See secs 14 & 22 of the Land Use Act. See also s 50 of the Act on the definition of holder of right of occupancy.

<sup>603</sup> Adegbite, Esther O., “Financial Sector Reforms And Economic Development In Nigeria: The Role of Management” Being A Paper Delivered At The Inaugural National Conference Of The Academy Of Management Nigeria At Abuja, Nigeria Titled *Management: Key to National Development* (November 22-23, 2005, Rock view Hotel, Abuja) 1.

<sup>604</sup>Obasan, K.A. & Adediran, O.A., “The Role of Industrial Sector in the Economic Development of Nigeria” (2010) 1(2) *Journal of Management and Society* 9-16 at 9.

<sup>605</sup>Matthew-Danial, B.J.St, “The Nigerian Economy in the 21<sup>st</sup> Century” available at <http://www.onlinenigeria.com/economics/> (accessed on 06/06/2012).

elected government at the dawn of the 21st Century after almost three decades of military rule which should afford Nigeria the opportunity to arrest the decline in her socio-economic development and embark on economic revival has not achieved this.<sup>606</sup> Nigeria is well endowed with raw materials and natural resources which, with the application of appropriate technology and production processes, will promote linkages between her raw and natural resources, production capability, and industry.

It is submitted that Nigeria is a middle income, mixed economy and an emerging market, with expanding financial service. It is ranked 30th in the world in terms of Gross Domestic Products (GDP) as of 2011, and its emergent manufacturing sector is the third-largest on the African continent, producing a large proportion of goods and services for the West African region.<sup>607</sup> It is the largest economy in the West Africa Region, 3rd largest economy in Africa coming behind South Africa and Egypt.<sup>608</sup> As earlier submitted, Nigeria's economy has been hindered by several years of mismanagement, misappropriation and corruption; however, economic reforms in recent times have put Nigeria back on track towards achieving its full economic potential.

It is observed that Nigerian GDP at purchasing power parity more than doubled from \$170.7 billion in 2005 to \$413.4 billion in 2011.<sup>609</sup> It would be appropriate to consider, though briefly, Nigeria's various economic sectors so as to determine how the country fares in each area.

#### 4.1. Agriculture

In Nigeria, like in most of the Sub-Saharan Africa, a substantial part of the population often rely directly on agriculture for income and employment, while the national government also benefits from this sector for export earnings as sources of revenue.<sup>610</sup> Agriculture has suffered from years of mismanagement, inconsistent and poorly conceived government policies, neglect and the lack of basic infrastructure. Still, the sector accounts for over 26.8 per cent of GDP and two-thirds of employment.<sup>611</sup> The largely subsistence agricultural sector has not kept up with rapid population growth, and Nigeria, once a large net exporter of food, now imports a large quantity of its food

---

<sup>606</sup>*ibid.*

<sup>607</sup> See "Economy of Nigeria" available at [http://en.wikipedia.org/wiki/economy\\_of\\_Nigeria](http://en.wikipedia.org/wiki/economy_of_Nigeria) (accessed on 06/06/2012).

<sup>608</sup>*ibid.*

<sup>609</sup>*ibid.*

<sup>610</sup>Banire, *op. cit.*, at 6.

<sup>611</sup> See "Economy of Nigeria" *op. cit.*



products.<sup>612</sup> Nigeria is no longer a major exporter of cocoa, groundnuts (peanuts), rubber, and palm oil. Most critical for the country's future is that Nigeria's land tenure system does not encourage long-term investment in technology or modern production methods and does not inspire the availability of rural credit.<sup>613</sup> The oil boom of the 1970s led Nigeria to neglect its strong agricultural and light manufacturing bases in favour of an unhealthy dependence on crude oil.

#### 4.2. Industry and Oil Companies

The contribution of the manufacturing industries in the Nigeria's economy cannot be over emphasized when considering its employment potentials and financial impacts on the economy. Apart from its role of building grounds for development by laying solid foundation for the economy, it also serves as import substituting industry and provides ready market for intermediate goods.<sup>614</sup> As noted above, the oil boom of the 1970s led Nigeria to neglect its strong agricultural and light manufacturing bases in favour of an unhealthy dependence on crude oil. Since 2000, oil and gas exports account for more than 98 per cent of export earnings and about 83 per cent of the Federal Government revenue.<sup>615</sup>

As earlier stated, the Land Use Act vests all land in the Governor of a State who holds them in trust for all Nigerians. It is submitted that the adoption of the Act has posed a lot of problems for mining companies putting them in dilemma as to who they should pay rent or compensation for use of land on which a mining lease is to be enjoyed or an oil pipeline is to be constructed.<sup>616</sup> Though in terms of provisions of the Land Use Act and the Nigerian Constitution, the Federal Government exercises exclusive control over minerals and owns the land where such minerals are found. However, Government's neglect of environmental problems of the oil producing communities in the Niger Delta has given rise to crises with clamour for resource control by the oil producing States.<sup>617</sup> However, protest over the environmental degradation of the oil communities of the Niger

---

<sup>612</sup>*Ibid.*

<sup>613</sup>*Ibid.*

<sup>614</sup>Obasan, K.A. & Adediran, O.A. "The Role of Industrial Sector in the Economic Development of Nigeria" (2010) 1(2) *Journal of Management and Society* 9-16 at 12

<sup>615</sup> See "Economy of Nigeria", *op. cit.*

<sup>616</sup> See Atseghua, L., *Oil and Gas in Nigeria: Theory and Practice* (New Era Publishers, Benin, 2004) 5; see also, Idowu, A.A., "Imperatives of Agricultural Land Rights, Ownership and Management Reforms in Nigeria" (A Paper delivered at the Stakeholders' Workshop on the National Agricultural Cadastre Programme organised by the Federal Ministry of Agriculture and water Resources, at the International Conference centre, Abuja, 28-30 July, 2009) at 13.

<sup>617</sup>Idowu, *op. cit.*, at 13.

Delta had been met with gross violation of human rights by the government. Several lives have been lost in clashes between the communities and security agencies.<sup>618</sup>

#### 4.3. Banking Services

Since undergoing severe distress in the mid-1990s, Nigeria's banking sector has witnessed significant growth over the last few years as new banks enter the financial market following liquidation, mergers and acquisition and other reforms. Private sector-led economic growth remains stymied by the high cost of doing business in Nigeria, including the need to duplicate essential infrastructure, the threat of crime and associated need for security counter measures, the lack of effective due process, and non-transparent economic decision making, especially in government. Also, harsh monetary policies implemented by the Central Bank of Nigeria to absorb excess Naira liquidity in the economy in recent times have made life more difficult for banks, some of which engage in currency arbitrage (round-tripping) activities that generally fall outside legal banking mechanisms.

#### 4.4. Human Capital

A country's potential for economic growth is greatly influenced by its endowments in terms of physical and human resources.<sup>619</sup> Human capital is an important factor for the wealth of a nation due to its influence on the overall production of the country. Technological progress can provide more efficient production-methods like machines and computers, but skilled labour is necessary to manage and develop them as well as to improve the quality and productivity of the existing labour. Nigeria is having a problem with its human capital.<sup>620</sup> The Human Development Index (HDI) provides a measure of human capital development in three dimensions: income, health, and education. The latest value of HDI shows that Nigeria is ranked 156 with the value of 0.459 among 187 countries.<sup>621</sup> The value places Nigeria in the bottom, meaning that Nigeria is considered

---

<sup>618</sup> See Olayiwola, L.M. & Adeleye, O., "Land Reform- Experience from Nigeria" Promoting Land Administration and Good Governance, (5<sup>th</sup> FIG Regional Conference, Accra, Ghana, 8-11 March, 2006) 8.

<sup>619</sup>Ogunleye-Adetona, C.I., "Human Resources and Economic Development in Nigeria" (2010) 12(3) *Journal of Sustainable Development in Africa* 204-211 at 204.

<sup>620</sup> See "Economy of Nigeria", *op. cit.*

<sup>621</sup>*Ibid.*



to have low level of human development.<sup>622</sup> The formation of Nigeria's human capital is, therefore, of great importance if Nigeria wants to be truly competitive in the future.

## 5. The Land Use Act, Land Management and Nigeria's Economic Development: Issues and Challenges

The concept of land management involves certain diversified issues such as the act of running and controlling land affairs or taking decisions over the use and disbursement of land and its resources.<sup>623</sup> Land management also connotes the idea of supervising and administering the use to which land is put in the society. It also includes all conceivable measures adopted by government to keep, protect and develop land and its resources for productive adventures such as farming, grazing, mining, wood processing and so on.<sup>624</sup>

Despite frantic efforts by past Nigerian governments to carry out reforms in the land sector, the various attempts have not been able to promote a programme of land use and management that support effective wealth creation, economic growth, food security, conservation of nature, protection of vulnerable groups, poverty reduction, enforceable land rights and housing delivery.<sup>625</sup> It is posited that effective land management has not been realised due to conflicting land tenure systems, unworkable legal framework, governmental instability, illiteracy, poverty and corruption. This necessitated the various efforts by governments at adopting certain reforms in the land sector in recent time.<sup>626</sup>

It is submitted that the Land Use Act has impacted both positively and negatively on the availability of land for development in Nigeria in such a way that it has provided access and freedom for individuals to acquire land in any part of Nigeria.<sup>627</sup> The Act has also an impact on property development in a way that brings sanity and gives an insight or idea of the kind of property to be constructed in an area for a particular purpose by zoning into either commercial, residential, etc.<sup>628</sup> Security of tenure and land rights of citizens is an important foundation for economic development. For many of these, land titles are

---

<sup>622</sup>*ibid.*

<sup>623</sup>*Idowu, op. cit.*, at 4.

<sup>624</sup>*ibid.*

<sup>625</sup>*ibid* at 1-2.

<sup>626</sup>*ibid* at 4.

<sup>627</sup> Nuhu, M.B., "Land Reform in Nigeria: The Nigerian Institution of Estate Surveyors and Valuers Perspective - Challenges and Prospects" Being a paper presented at the FIG Working Week 2011, Bridging the Gap between Cultures Marrakech, (Morocco, 18-22 May 2011) 1-10, at 7; see also, Nuhu, (2008), *op. cit.*, at 10.

<sup>628</sup>Nuhu, (2011), *op. cit.*, at 7.

the main sources of collateralisation for obtaining credit from informal and established financial institutions. Consequently, securing land rights and land titles is particularly relevant for all socio-economic classes in the nation's economy.<sup>629</sup>

On the other hand, the Act has also made it difficult for some to acquire land because of government bureaucratic process of acquiring one and the issuance of certificate of occupancy and the vesting of lands on the government; all which made it difficult for individuals to acquire land.<sup>630</sup>

### 5.1. Mortgage Transactions and Issue of Consent

An important way in which the Land Use Act and land administration have impacted on economic transactions in Nigeria is the requirement of governor's consent in relating to mortgage transactions. As sections 21 and 22 of the Act stipulates, it shall not be lawful for a holder of a statutory right of occupancy granted by the governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, among others, without the consent of the governor first had and obtained. One of the major problems confronting land security in Nigeria is the requirement of consent by the appropriate authority for any dealing in land.

A mortgage is a transfer of property (often an interest in land) as security for the repayment of a loan.<sup>631</sup> Strictly defined, a mortgage is a real right in respect of the immovable property of another, securing a principal obligation between a creditor and a debtor.<sup>632</sup> It is a conveyance or other disposition of land to secure the payment of money or the discharge of some other obligations.<sup>633</sup> Mortgage as a form of credit transaction in Nigeria is decisively important, and of course, constitutes a significant expression of and contributor to the national development.<sup>634</sup> A mortgage is also defined as "a legal or equitable conveyance of title as a security for the payment of a debt or the discharge of some other obligation for which it is given subject to a condition that the title shall be reconveyed if the mortgage debt is liquidated."<sup>635</sup>

<sup>629</sup>*Ibid*, at 6.

<sup>630</sup>*Ibid*, at 7; see also, Nuhu, (2008), *op. cit.*, at 10.

<sup>631</sup> See Egwummuo, *op. cit.*, at 232.

<sup>632</sup>de Bois, *et.al.*, *op. cit.*, at 631; see also, Bray, *op. cit.*, at 351.

<sup>633</sup>*Santley v Wilde* (1899) 2 Ch. 474.

<sup>634</sup> Umezulike, I.A., *The Land Use Act, More than two Decades After, and Problems of Adaptive Strategies of Implementation* (College of Law, Igbiniedion University, Okada, 2004) 105.

<sup>635</sup>*Stamley v Wilde*, (1899) 2 Ch. 474, Lord Lindley, M.R. According to Oluyede, a mortgage is a conveyance of land or assignment of chattels as a security for the repayment of a debt or the discharge of some



The procedure for obtaining the required consent is cumbersome and expensive with adverse effects on commerce.<sup>636</sup> As Obaseki, JSC, aptly captured it in *Savannah Bank (Nig) Ltd. v. Ajilo*,<sup>637</sup> "the Land Use Act is bound to have a suffocating effect on the commercial life of the land and house owning class of society who use their properties to raise loans and advances from the banks. I have no doubt that it will take the whole working hours of a Governor to sign consent papers (without going half way) if these clauses are to be implemented." Since the commencement of the Act, a number of legal problems have arisen from this form of credit transaction including a number of issues which are of such concern to the banks and mortgage institutions, industries, individuals, legal practitioners, conveyancers and the general public.<sup>638</sup>

It is submitted that security for credit or mortgage transaction is valueless if the mortgage cannot be realised without difficulty when the need arises. A good security must, therefore, be readily ascertainable and reasonably stable over a fairly long time.<sup>639</sup> It must also be transferable without undue cost and trouble to the mortgagee including the ability of the said mortgagee to obtain indefeasible title with minimum trouble and delay without incurring a residual obligations and liabilities to third party in the process.<sup>640</sup> The Land Use Act has brought a great deal of revolution to mortgage transactions by the requirement that consent of the governor must be obtained to the transaction before the mortgagor can transfer his interest to the mortgagee.<sup>641</sup>

Mortgagees have special preference for land security for their credits. Thus, mortgages of land have increased in commercial importance in their security portfolio. That is why it is necessary to examine whether in the light of the provisions of the LUA, the mortgagee's final potent remedies are still extant.<sup>642</sup> It is, however, settled on the authorities that the validity of mortgage of statutory right of occupancy depends on

---

other obligation for which it is given. See Oluyede, *op. cit.*, at 141. Mortgage may also be described as transfer of an interest in property (mainly real property) as a security for a debt. This arrangement enables the creditor (mortgagee), in the event of the debtor (mortgagor) being unable or unwilling to pay off the debt, to enforce the said debt against the mortgaged property, say by selling it and recouping what he is owed.

<sup>636</sup> Wilson, I., "Enhancing Nigeria's Economic Development: A Case for Institutional and Regulatory Reforms in Nigeria's Banking Sector" paper presented at the BBI 2nd National Stakeholders Forum on Removing Bottlenecks to Business in Nigeria, held at Nicon Hilton, Abuja, Nigeria, (19th and 20th April, 2005) 1-14 at 6.

<sup>637</sup>[1989] NWLR (Pt. 97) 305 at 329.

<sup>638</sup>Umezulike, *op. cit.*, at 105.

<sup>639</sup>*ibid.*, at 107.

<sup>640</sup>*ibid.*, at 107-108.

<sup>641</sup> Aluko, O., *The Law of Real Property and Procedure*, 2<sup>nd</sup> ed. (Brighter Star Law Series, Ibadan, 2001) 126.

<sup>642</sup>Umezulike, *op. cit.*, at 108.

whether at the time of its creation the consent of the governor was sought and obtained.<sup>643</sup>

As noted above, the problem includes the prohibitive consent fee and other fees payable by the mortgagor. Also, precious time is wasted in processing the application for consent which may take months and at times, years to go through. The existence of a cumbersome process of title documentation of land ownership which is reinforced by inadequate cadastral system makes mortgage financing very difficult.<sup>644</sup> It is certain that there would be very few people who have not been at the receiving end of the cumbersome process of obtaining Governor's consent in Nigeria. The process of obtaining consent is truly herculean, tortuous and laborious.<sup>645</sup>

The import of the Supreme Court decision regarding consent in *Savannah Bank v Ajilo* also impact negatively on mortgage transactions in Nigeria. However, an issue has been raised as to whether the grantor of right of occupancy, whose duty it is to obtain the required consent should be allowed to invalidate the transactions for lack of Governor's consent.<sup>646</sup> In other words, can the equitable principle that a grantor cannot be allowed to rely on his own wrong be invoked in dealing with the consent provisions of the Land Use Act. This issue came up in *Ajilo's case*. Obaseki, JSC who read the lead judgement in that case held, *inter alia*: "[a]lthough the 1<sup>st</sup> plaintiff/respondent by the tenor of the Land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior consent in writing of the governor, the express provisions of the Land Use Act make it undesirable to invoke the maxim *ex turpi causa non oritur action* and the equitable principle enshrined in the case of *Bucknor-MacLean Inlaks Ltd* (1980) 8-11 SC 1."<sup>647</sup>

The view held by Obaseki, JSC in *Ajilo's case* on the non-applicability of the maxim "*ex turpi causa non oritur action*" has been criticized by Omotola.<sup>648</sup> In a similar context,

<sup>643</sup>See *Savannah Bank Ltd v Ajilo* (supra).

<sup>644</sup>Sanusi, J.O., "Mortgage Financing in Nigeria: Issues and Challenges" Being a Paper Presented at the 9th John Wood Ekpenyong Memorial Lecture, Organized by the Nigerian Institution of Estate Surveyors and Valuers, (January 29, 2003) 1-21 at 16.

<sup>645</sup>Babalakin & Co., *op. cit.*, at 7.

<sup>646</sup>Omotola, J.A., "Interpreting the Land Use Act" (1992) 1(1) *The Journal of Nigerian Law* 108-120 at 108.

<sup>647</sup>*Savannah Bank Ltd v Ajilo*, (supra), at 324; see also, *Federal Mortgage Bank of Nigeria v Dr Elisha Bamidele Babatunde* [1999] 12 NWLR (pt 632) 683.

<sup>648</sup>In his words: "there is nothing in the relevant provision of the Act which necessarily prohibits the application of the principle. The consent provisions of the Act especially sections 22 and 26 are all traceable to similar provisions in the Land Tenure Law 1962 (see sections 28 and 32 thereof) and section 11 of the Land and Native Rights Act, 1916. The latter was considered by the Federal Supreme Court in *Solanke v Abed* (1962) 1 All NLR 320(a decision not referred to by his lordship, probably overlooked) Unsworth FJ, delivering the judgement of the court, with which Ademola, CJF, and Taylor, FJ, concurred, held that the grantor could not be heard as against the grantee to put forwards his own



Yakubu also submitted that a court of law should move forward to do substantial justice and provide answers to social problems to enable our law to grow.<sup>649</sup> Though not watering down the decision in *Ajilo's* case that consent is required on any transaction involving land in the country, Nigerian courts are now inclined to doing substantial justice rather than relying on technicalities.

In *Chief Belonwu Ugochukwu v Cooperative & Commerce Bank Nigeria Ltd*,<sup>650</sup> the appellant sometimes in 1978 obtained loan facilities from the respondent bank. He was not paying the loan and the interest, ten years later the bank informed him of its intention to exercise its right under the mortgage deed to sell the mortgaged property. The appellant promptly filed a suit seeking declaratory reliefs and challenged the validity of the deed of mortgage, on the ground of non-compliance with the Land Use Act and also relying on the Supreme Court's decision in *Savannah Bank Nig. Ltd v Ajilo*. Dismissing the appeal, the Court held as follows:

"The holder of a right of occupancy, evidenced by a certificate of occupancy is the one to seek the consent of the governor to alienate, transfer, mortgage, etc. There is no doubt the consent given in exhibit 3 was at the instance of the appellant who was in need of fund from the respondent by way of mortgages. *It is not from him one must hear that the consent he obtained was void...The appellant being the holder of the right of occupancy over the house i.e. No. 239 Cameroun Road, Aba, was to seek consent and it is unconscionable for him to turn roundabout and maintain that the consent of the governor he obtained was flawed having received valuable consideration i.e. the loan from the respondent.*"<sup>651</sup>

On his part, Ogundare, JSC added:

"[I]t was the duty of the plaintiff, as mortgagor to seek the consent of the governor for him to mortgage his property to the defendant. This is what the law says: see the Land Use Act. *For him to turn round years after executing the mortgage deed (and when as a result of his default, the mortgagee, that is the defendant, sought to exercise its right under the mortgage deed) to assert that the mortgage deed was null and void for lack of the governor's consent, is to say the least, rather fraudulent and unconscionable.* It has become a vogue these days for mortgagors

---

wrongful act and say that the agreement was unenforceable because he himself had failed to get the necessary consent under section 11 of the Land and Native Rights Act. See Omotola, (1992), *op. cit.*, at 110.

<sup>649</sup> See Yakubu, J.A., "The Equal and Unequal Scale of Justice" (2002) 3 *Journal of Private & Business Law* 194-210 at 200 & 210.

<sup>650</sup>[1996] 6 NWLR (pt 456) 524.

<sup>651</sup>Per S.M.A. Belgore, JSC at 540. Emphasis added.

in similar circumstances to fall upon the decision of this court in *Savannah Bank Nig. Ltd v Ajilo* (1989) 1 NWLR (pt 97) 305 as a vehicle to escape from their liability under the mortgage deed they have entered into. I think that this is an unfortunate development and I do not think that case, that is, *Savannah Bank v. Ajilo* (supra) decides such a thing...To allow a mortgagor to rescind from his liability on the ground of his failure to do that which the law enjoins him to do will only result in paralysis of economic activities in this country. This court, I dare say, will not allow such a situation to arise."<sup>652</sup>

A similar position was taken by the Supreme Court in *Awojugbagbe Light Industries Ltd v P. N. Chinukwe & Ors.*<sup>653</sup> Dismissing the appeal, the Supreme Court held, *inter alia*, thus: "...I need only to remark in passing that it is inequitable and morally despicable for the appellant, after obtaining a loan and after utilizing the same to now turn round and allege that the agreement (exhibit E) between it and the grantor of the loan, i.e. the 2<sup>nd</sup> respondent, is null and void."<sup>654</sup> The decision of the Supreme Court in *Ugochukwu and Awojugbagbe Light Industries Ltd* considered above has given impetus to transformation in judicial decisions on the applicability of the maxim "*ex turpi causa non oritur action*", and in subsequent cases, Nigerian courts have been more assertive on the applicability of the maxim.<sup>655</sup>

---

<sup>652</sup>At 542. Emphasis added.

<sup>653</sup>[1995] 4 NWLR (pt 390) 379. In that case, the appellant as plaintiff sued the respondent as defendant in the High Court of Oyo State sitting at Ibadan. The appellant challenged the mortgage it executed in favour of the 2<sup>nd</sup> respondent, N.I.D.B. Ltd as being null and void for not having complied with the relevant provisions of the Land Use Act, 1978. In their statement of defence and counter-claim, the respondents pleaded the indebtedness of the appellant; the appointment of the receiver, the 1<sup>st</sup> respondent, in accordance with the terms of the mortgage deed after the appellant had failed to liquidate the debt when it had become due for repayment. The 2<sup>nd</sup> respondent counter-claimed for the sum of N364, 142, 08K being the total amount (comprising the principal and the interest) the appellant was indebted to it. As security for the loan, the appellant's managing director mortgaged his property at No. 60/64 Akobielemu Layout, Ijebu road, Ibadan to the 2<sup>nd</sup> respondent at about 1980. The mortgage deed was, however, not perfected until about 8<sup>th</sup> October, 1985 upon the receipt of the governor's consent. At the conclusion of the hearing, the learned trial judge dismissed all the claims of the appellant and entered judgment for the respondent in the sum counter-claimed. Dissatisfied with the decision, the appellant appealed to the Court of Appeal which dismissed the appeal. It finally appealed to the Supreme Court which also dismissed the appeal.

<sup>654</sup> See *per Onu*, JSC, at 426. This case was decided by the full panel of the Supreme Court to wit: Bello, CJN, I.L. Kutigi, JSC, M.E. Ogundare, JSC, E.O. Ogwuegbu, JSC, S.I. Onu, JSC, Y.O. Adio, JSC & A.I. Iguh, JSC. Also, three senior counsel were invited as *amici curie*: Chief F.R.A. Williams, SAN, Prof A.B. Kasumu, SAN and Prof J.A. Omotola.

<sup>655</sup> In *Alhaji Ferdinand Ibekwe v Mrs. Lucy Maduka* [1995] 4 NWLR (pt 392) 716 at 725, the Court of Appeal, (Jos Judicial Division) condemned such a fraudulent act and held that apart from being morally despicable for a person who has benefited from an agreement to turn round and say that the agreement is null and void, no court of law should allow a person to benefit from his wrongdoing. See also, *Raymond Inyang & 2 Ors v Engr. Maurice A. Ebong* [2002] 2 NWLR (pt751) 284 at 333-334. Similarly, in



This position is commendable as being in tune with the settled principle of law expressed in the Latin maxim, "*nollus commodum capere postest de jura sua propria*" that is. no one should be allowed to benefit from his own wrong.<sup>656</sup> This position was taken further by the Court of Appeal in *Eboni Finance and Securities Ltd v Wole Technical Services & 2 Ors*<sup>657</sup> where the court, *per Pats-Acholonu*, JCA held as follows:

"[A]s the 1<sup>st</sup> and 2<sup>nd</sup> respondents have received the money, might equity not come to their rescue for unjust enrichment. I think the principle of unjust enrichment which unfortunately is not well developed in English law as both in US and Scotland should of necessity be nurtured to growth in a new and complex society like ours where people can easily at a whiff of breach resort to law to ward off debtor other enrichments they have had, at the expense of other. This is specie of constructive trust which is an instrument which the court of equity may employ to prevent undue enrichment. I believe that when a person is holding tight that which is subject of equity he should not be allowed to hold it firmly. Therefore where a party unjustly enriches himself at the expense of the plaintiff he must be made to disgorge it...The premise behind the doctrine of restitution and unjust enrichment is that justice be done...In this case, the respondents must be made to vomit out what they have taken (unjustly)."<sup>658</sup>

---

*First Bank of Nigeria Plc v May Medical Clinic and Diagnostics Centre Ltd & Ors* [1996] 9 NWLR (pt 471) 195, the Court of Appeal, *per Mohammed*, JCA at 204-205, commented as follows: "...the law can be lenient to applicants who unwittingly through acts of commission or omission though innocently commit procedural irregularity...but certainly the law does not favour those who for selfish reasons circumvent the real issue, in order to draw benefit from their own misdeeds..."

<sup>656</sup> See *First Bank of Nigeria Plc v May Medical Clinic and Diagnostics Centre Ltd & Ors* (*supra*) at 204; see also, *Buswell v Goodwin* (1971) 1 All ER 418 at 421 where Widgery, LJ said: "The proposition that a man will not be allowed to take advantage of his own wrong is no doubt a very salutary one and one which the court would wish to endorse." *The Administrators/Executors of the Estate of General Sani Abacha (Deceased) v Samuel David Eke-Spiff & 3 Others* [2009] 7 NWLR (pt 1139) 97 at 132.

<sup>657</sup> [1996] 7 NWLR (pt 461) 464.

<sup>658</sup> At 478; see also, *Pharmatek Industrial Projects Ltd v Trade Bank Nig. Plc & 4 Others* [2009] 13 NWLR (pt 1159) 577 at 627-628 & 641; *UBN v Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567. See also, *Schobel v Barber* (1967) 1 QR 349, where one of two joint tenants murdered the other, it was held that the murderer took by survivorship, but that public policy prevented him from profiting from his wrong and so imposed on him a constructive trust as to one half in favour of the victim's next-of-kin. The rule is that a man shall not slay his benefactor and thereby take his booty. See *The Estate of Hall* (1914) LPL 7; *Re Giles* (1972) Ch. 544 & *McCormick v Grogan* (1869) LR 4 H.L. 82 at 97. Also, in *Ah Ayotunde Seriki v Sefiu Olukorede* [1999] 3 NWLR (pt 595) 469 at 480-481, it was held that no person involved in any form of immoral or illegal act or transaction should be allowed to come to court to seek redress. No polluted hand shall touch the pure foundation of justice. One cannot have a right of action when he or she comes to a court of justice in an unclean manner. See the English case of *Lodge v National Union Investment Co. Ltd* (1907) 1 Ch. 300 where B borrowed money from M, an unregistered money-lender and mortgaged certain securities to him. The contract was illegal and void under the Money Lender Act, 1900. B sued M for delivery up of the securities. Parker J refused to make the order for delivery up except upon the terms that B should repay the money which had been advanced to him.

## 5.2. Insecurity of Title

As is normally the case in human affairs, the promulgation of the Land Use Act in 1978 raised expectations.<sup>659</sup> But, what is the reality of the situation now? It is submitted that the existing system of landholding and administration in Nigeria is fraught with numerous problems and challenges.<sup>660</sup> The Act aims at streamlining and simplifying the management and ownership of land in the country. Security of land is essential for economic development in any society.<sup>661</sup> It is a well-known fact that the current state of land management in the country has failed to guarantee security of title, thereby, impacting negatively on economic development in the country.

Part of the problems that led to the enactment of the Act were sharp practices, which often led to the same piece of land being sold to more than one person, creating vague and defective titles. For instance, in *Ogunbambi v Abowaba*,<sup>662</sup> the Supreme Court noted as follows:

"The case is indeed in this respect like many which come before this court: one in which the Oloto family either by inadvertence or design sell or purport to sell the same piece of land at different times to different persons. It passes my comprehension how these days, when such disputes have come before this court over and over again, any person will purchase land from this family without the most careful investigation, for more often than not they purchase a law suit, and very often that is all they get."

This problem still exists today. As Omotola rightly pointed out, "our insecurity of title to land has multiplied, disputes over title to land continued unabated. The courts are as busy as ever sorting these out. Land is now more difficult to acquire. Processing of document of title takes years to complete. Many applications for grant of right of

---

In the same vein, in *Haigh v Kaye* (1872) 7 Ch. App. 469, James L.J stated that Statute of Frauds was never intended to prevent the court of equity from giving relief in a case of plain, clear and deliberate fraud. Also in *Nigerian Industrial Development Bank Ltd v Olalomi Industries Ltd* [2002] 5 NWLR (pt 761) 532 at 548, the Court admonished as follows: "...it is my view that it will be in the interest of justice to do so rather than allow the mortgagee to eat his cake and still have it back. The court should resist at all cost the attempt at using it as an engine of fraud or cheating or dishonesty." See also, Akintola, S.O. "Examination of Constructive Trusts as a Remedy for Unjust Enrichment" (2002) 3 *Journal of Private and Business Law* 130 at 140; see also, Sonnekus, J.C., *Unjustified Enrichment in South African Law* (LexisNexis, Durban, 2008) 8-9; Visser, Daniel *Unjustified Enrichment* (Juta & Co, Cape Town, 2008) 4-5. See also, Taiwo, E.A., "The Effects of the Failure to Obtain Consent to Alienate Rights under the Land Use Act and the Emerging Equities" (2006) 5 *Journal of Private and Business Law* 171-185 at 185.

<sup>659</sup> See Omotola, J.A. (ed.), *The Land Use Act (The Report of a National Workshop held at the University of Lagos, 25-28 May, 1981)* (Lagos University Press, Lagos, 1982) 11.

<sup>660</sup> Banire, *op. cit.*, at 9.

<sup>661</sup> *Ibid.*, at 10.

<sup>662</sup> (1951) 13 WACA 222 at 223, *per Verity Ag. P.*



occupancy have been abandoned..."<sup>663</sup> Even the grant of certificate of Occupancy at time, does not solve this problem. For instance in *Saude v Abdullahi*,<sup>664</sup> there was a grant of right of occupancy to two persons over the same land. One of the issues determined by the court was the effect of a subsequent grant of the right of occupancy on a land over which there subsists an earlier grant.

In what appeared to be a literal interpretation of the wordings of section 5(2) of the Land Use Act, the Supreme Court held that "upon a proper interpretation of subsection (2) of section 5 of the Land Use Act, a later statutory right of occupancy extinguishes all rights created by an earlier grant." It is submitted that the implication of this is that the issue of whether title is secured or not may turn out to depend on the canon of interpretation adopted by the court.<sup>665</sup> At the same time, in *S.O. Adole v Boniface B. Gwar*,<sup>666</sup> the Supreme Court held that the Land Use Act was not promulgated with the objective of abolishing all existing titles or rights to possession existing prior to its promulgation.

Further in this regard, it is submitted that a title to land is not even secured even upon grant of certificate of occupancy. A certificate of occupancy is, *prima facie*, evidence of exclusive possession of land to which it relates and the onus of proof is on the person who asserts the contrary.<sup>667</sup> A certificate of occupancy is not a conclusive proof of title and ownership of land, as such; the issuance of a certificate of occupancy in respect of any land would not validate any defect in the title of the holder.<sup>668</sup>

In *C.S.S. Bookshops Ltd v Registered Trustees of Muslim Community in Rivers State & 3 Ors*,<sup>669</sup> the Supreme Court emphasized it that the mere grant of a right of occupancy over a land in respect of which there is already a right of occupancy or an existing interest in favour of another person does not amount to the revocation of the prior right of occupancy or existing interest. Any person without title to a parcel of land in respect of which the certificate of occupancy is issued acquires no right or interest which he did not

<sup>663</sup> As quoted in *Banire, op. cit.*, at 11.

<sup>664</sup> [1989] 4 NWLR (pt 116) 387.

<sup>665</sup> Compare with the earlier decision of the same court in *Dzungwe v Gbisha* [1985] 2 NWLR (pt 8) 528.

<sup>666</sup> [2008] 11 NWLR (pt 1099) 562 at 588 & 606; See also, *Hannah K. Agundo v Mercy N. Gberbo & Anor* [1999] 9 NWLR (pt 617) 71 at 98 (CA); *Kyari v Alkali* [2001] 11 NWLR (pt 724) 412; *Adisa v Oyinwola* [2000] 10 NWLR (pt 724) 412.

<sup>667</sup> See *Emy J. Bila Auta v Chief Willy Ibe* [2003] 13 NWLR (pt 837) 247 at 266 (SC); *Chief A. J. Jiwul v Nde Joshua Dimlong* [2003] 9 NWLR (pt 824) 154 at 214; see also, *Ogunleye v Oni* [1990] 2 NWLR (pt 135) 745; *Registered Trustees Apostolic Church v Olowoloni* [1990] 6 NWLR (pt 158) 514.

<sup>668</sup> See *Mrs Mojisola Edebiri v Prince Omotayo Daniel & Anor* [2009] 8 NWLR (pt 1142) 15 at 27-28 & 31.

<sup>669</sup> [2006] 11 NWLR (pt 992) 530 at 567-568; see also, *Ibrahim v Mohammed* [2003] 6 NWLR (pt 817) 615; *Olohunde v Adeyaju* [2000] 10 NWLR (pt 676) 562; *Ilona v Idakwo* [2003] 11 NWLR (pt 830) 53.

have before. Thus, where it is shown that another person has a better right to the grant, the court will set aside the certificate wrongly issued.<sup>670</sup>

In this regard, in *Saidu Chiroma v Madeus Yeam Suwa*,<sup>671</sup> the Court of Appeal dismissed the action of the appellant for trespass against the respondent in respect of the land in which the appellant held a certificate of occupancy when evidence revealed that prior to the issuance of the certificate the appellant had sold the land to the respondent.<sup>672</sup> Also, in *Osazuwa v Ojo*,<sup>673</sup> the Court held thus:

"A certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a certificate also raises the presumption that at the time it was issued there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy then the court can revoke it."<sup>674</sup>

### 5.3. Lack of Adequate Access to Land in the Country

One of the objectives of the Land Use Act is to assist the citizenry, irrespective of his social status, to realise his ambition and aspiration of owning a place where he and his family will live a secured and peaceful life. As earlier stated, the importance of land cannot be over emphasised. Thus, in *Ibrahim v Mohammed*,<sup>675</sup> the Supreme Court stated that the Land Use Act was promulgated as a whole with a view to making land available to all Nigerians irrespective of where they live. However, in reality, reverse is the case as the issue of lack of access to land remains germane in Nigeria. Not everyone has access to land as promised by the Act.

The Act was enacted to address some problems but it is difficult to see the extent to which it has solved any of these problems. It is submitted also that access to land alone cannot provide a way out of poverty, for access and control over land to be productive and sustainable; it must be linked to a range of other services and infrastructure, such

<sup>670</sup>*Hannah K. Agundo v Mercy N. Gberbo & Anor* [1999] 9 NWLR (pt 617) 71 at 97-98; *Ogbahon v Reg. Trustees of Christ's Chosen Church of God & Anor* [2002] 1 NWLR (pt 749) 675 at 713; *Omiyale v Macaulay* [2009] 7 NWLR (pt 1141) 597 at 628; *Ogunleye v Oni* [1990] 2 NWLR (pt 135) 745.

<sup>671</sup>[1986] 1 NWLR 751.

<sup>672</sup> See also, *Dzungwe v Gbishe* [1985] 2 NWLR (pt 8) 528; see also, Utuama, *op. cit* 137.

<sup>673</sup>[1999] 13 NWLR (pt 634) 286.

<sup>674</sup> See also *Haruna v Ojukwu* [1991] 7 NWLR (pt 202) 207; *Dabup v. Kolo* [1993] 9 NWLR (pt 317) 254 at 269-270.

<sup>675</sup>(2003) 17 WRN 1.



as affordable credit and access to markets.<sup>676</sup> Since it is on land that food is cultivated to sustain life, the outward manifestation of this right in Nigeria is, therefore, greatly depend on the management of land through the norms and mechanisms of the Land Use Act.<sup>677</sup>

Land occupies a central position in economic development in any country. Land, being a scarce and a unique resource, its careful management is essential to economic development and, therefore, should be taken seriously. It is submitted that the utility to which a nation puts its land that makes it to be classified as developed, developing and third world country.<sup>678</sup> Whatever may be the prevailing method of land administration in a society, land has always been one of the most important assets in a country. Virtually every form of investment or development by government and private entities is dependent upon land in one way or another.<sup>679</sup> It is generally accepted that poor land administration can impede economic development and social welfare. The quality and quantity of land determine the extent of man's development. It is generally acknowledge that land is central to any solutions offered to the process of development and poverty.<sup>680</sup>

## 6. Corruption as Impediment to Economic Development in Nigeria

Ordinarily, the title of this paper should limit our discussions to the impact of land administration on economic development in Nigeria. However, one cannot but comment, though briefly, on corruption given its enormous adverse effect on economic development of any country. For meaningful economic development, Nigeria should strive to minimise corruption and ensure good governance. The issue of corruption is germane because despite good land management and administration as well as the availability and access to land by everyone, if corruption is not eradicated, meaningful

---

<sup>676</sup> See Khoza, S. (ed.), *Socio-economic Rights in South Africa*, 2<sup>nd</sup> ed. (Community Law Centre, University of Western Cape, 2007) 200.

<sup>677</sup> Udombana, N.J., "Weighed in the Balances and Found Wanting: Nigeria's land Use Act and Human Rights" in Smith, I.O. (ed.), *The Land Use Act, Twenty Five Years After* (Department of Private and Property Law, University of Lagos, Lagos, 2003) 62.

<sup>678</sup> See Onalaja, M.O., "The Courts and the Problem of Compensation for Land Rights" in Adigun, O. (ed.), *The Land Use Act, Administration and Policy Implication* (University of Lagos Press, Lagos, 1991) 156.

<sup>679</sup> Banire, *op. cit.*, at 4.

<sup>680</sup> Adigun, O., "Legal Theories of Property- The Land Use Act in Perspectives" in Adigun (ed.), *The Land Use Act, Administration and Policy*, *op. cit.*, at 10.

economic development will elude the country. Good governance is, therefore, the antidote for corruption.<sup>681</sup>

The Independent and Corrupt Practices Commission (ICPC) Act in its section 2 defines corruption to "includes bribery, fraud and other related offences." However, the Economic and Financial Crime Commission (EFCC) Act<sup>682</sup> has broadened this definition to include "money laundering, embezzlement, bribery, looting and any form of corrupt practices..." Corruption is also described as the misuse of entrusted power for private benefit. It is described as a symptom of something gone wrong in the management of the state in the sense that institutions designed to govern the relationships between citizens and the state are used instead for the personal enrichment of public officials and the provision of benefit to the corrupt. It also entails an act done with intent to give some advantage inconsistent with official duty and the rights of others. It is an act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.<sup>683</sup>

While transparency and good governance are the hallmarks of a democratic state, corruption is universally accepted as antithetical to development and good governance.<sup>684</sup> In land registry in each state, corruption abound greatly with officials in

<sup>681</sup> The World Bank and International Monetary Fund (IMF) have defined governance as "the manner in which public officials and institutions acquire and exercise authority to shape public policy and provide public goods and services." See World Bank & IMF Development Committee *Strengthening Bank Group Engagement on Governance and Anti-Corruption* (8 September 2006) i; Broadly speaking, governance refers to the exercise of power through a country's economic, social and political institutions in which institutions represent the organizational rules and routines, formal laws, and informal norms that together shape the incentives of policy-makers, overseers, and providers of public services. See UNDP Policy Paper *Governance for Sustainable Human Development* (UNDP, 1997) 2-3; available online at: <http://www.adb.org/Documents/Policies/Governance/gov300asp?p=policies> (accessed on 2008/12/20) & also at: <http://www.worldbank.org/publicsector/overview.htm> (accessed on 2008/12/20).

<sup>682</sup> See sec. 46 of the Act.

<sup>683</sup> See *Black's Law Dictionary*, (6th ed.) 345; See also, sec. 1 of Decree No.38 of 1975 which described corruption as "the offer, promise or receipt of gratification as inducement for reward." See generally, Ocheje, Paul D., "Law and Social Change: A Socio-legal Analysis of Nigeria's Corrupt Practices and other Related Offences Act, 2000" (2001) 45(2) *Journal of African Law* 173-195, at 178-180; Fagbadebo, O., "Corruption, Governance and Political Instability in Nigeria" (2007) 1(2) *African Journal of Political Science & International Relations* 28-37 at 29; UNDP, *Corruption and Good Governance Discussion Paper* 3, (New York, July 1997) 35; Peter, C. Maina & Masabo, Juliana, "Confronting Grand Corruption in Public and Private Sectors: A Spirited New Initiative from Tanzania" (2009) 1(2) *Namibia Law Journal* 49-71 at 49; Cremer, G., *Corruption and Development Aid- Confronting the Challenges* (Lynne Rienner Publishers, Colorado, 2008) 9-10; Oke, Tayo, "How to Make Nigeria a Bribery-free Society" *The Nation* (Friday June 8, 2012) 18.

<sup>684</sup> In its report, *Governance for Sustainable Human Development*, the UNDP acknowledges the following as core characteristics of good governance: participation, rule of law, consensus orientation, transparency, responsiveness, equity, effectiveness and efficiency, accountability and strategic vision. See UNDP



the habit of undervaluing landed property for personal gains and kickbacks and other forms of corrupt practices. We should endeavour to live as Nigerians within the tenor of the Constitution and good democratic principles. In its preamble, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) states that the Constitution is enacted for the purpose of promoting good government and welfare of all persons in the country. The Constitution also obliges the State to abolish all corrupt practices and abuse of power.<sup>685</sup>

The obvious fact is that corruption is not a new phenomenon in Nigeria, it has long been part of our societies, and as such, it will not just disappear unless it is frantically fought. Though, pervasive in nature, yet, it can be contained and its pernicious effects on social and economic development can be curtailed significantly if government is serious about it. Government should, therefore, create an appropriate enabling environment to fighting corruption by implementing policies and providing adequate legal framework. It should be stated clearly that the fight against corruption goes beyond merely enacting laws that makes corruption illegal and punishable.<sup>686</sup> Legislative framework is just the starting point in this respect. Examination of the various laws put in place to fighting corruption in Nigeria leaves little doubt that laws alone cannot win the war against corruption.

Despite all the "good" laws on this issue, Nigeria is still regarded as one of the most corrupt countries in the world. There are enough laws in the statute books to deal

---

Policy Paper, above note 1, at 2-3; see also, *Good Governance and Anti-Corruption Policy and Guide* (The EEA Financial Mechanism and the Norwegian Financial Mechanism 2004-2009, adopted on 01 December 2005: Addendum: 05 May 2006) 3. According to Abdellatif, good governance is, among other things, participatory, transparent and accountable, effective and equitable, and it promotes rule of law. It ensures that political, social and economic priorities are based on broad consensus in society and that voices of the poorest and most vulnerable are heard in decision making over the allocation of development resources. See Adel M. Abdellatif, "Good Governance and its Relationship to Democracy and Economic development" *A Paper Presented at the Global Forum III on Fighting Corruption and Safeguarding Integrity*, Seoul, (20-31 May 2003) 4-6; Mark Zirnask, Kerryn Clarke & Annie Feith, *From Corruption to Good Governance* (A Paper by the Justice & International Mission Unit of Uniting Churches in Australia) National Council of Churches in Australia (March 2008) 9. See also, Kututwa, Noel, *African Anti-Corruption Commitments- a Review of Eight NEPAD Countries* (African Human Security Initiative, 2005) 67. See also, Taiwo, E.A. "Executive Immunity under the Nigerian Constitution and Its Impact on the Government's Anti-Corruption Crusade" (2010) 16(2) *East African Journal of Peace and Human Rights* (Journal of the Human Rights and Peace Centre (HURIPEC) Faculty of Law, Makerere University, Uganda), 216-247 at 216.

<sup>685</sup> See sec. 15(5) & sec. 22 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. Other laws put in place to fight corruption before this Constitution include, the Public Officers (Investigation of Assets) Decree No. 5 of 1966; the Corrupt Practices Decree of 1975; the National Drug Law Enforcement Agency Act, Cap 253, LFN, 1990; the Indiscipline, Corrupt Practices and Economic Crime (Prohibition) Decree of 1994; the Money Laundering Decree No 16 of 1995; the Advance Fee Fraud Decree No. 3 of 1995; the Foreign Exchange (Miscellaneous) Provision Decree No. 17 of 1995; the Failed Bank Tribunal Decree No 16 of 1996, etc.

<sup>686</sup>Kututwa, *op. cit.*, at 12.

effectively with corruption issues, what is lacking is the strong political will needed to effectively execute those laws. Strong political will to fighting corruption is, therefore, necessary to ensure the effectiveness of the anti-corruption laws and agencies and to see to economic development in Nigeria.

The recent revelation in the probe by the National Assembly established it clearly that within one year, government officials and oil cabals siphoned N2 trillion for a dubious fuel subsidy scheme.<sup>687</sup> Also, within the same period, civil servants stole billions of Naira in pension fund.<sup>688</sup> The time is, therefore, now to seriously canvass against corruption in the country. Government should rev up the anti-corruption war and prosecute without delay those indicted in the saga.

## 7. Conclusion

The importance of land management to a society cannot be over-emphasised, irrespective of the level of economic development in the society. Good land management ensures that property rights are well defined, thereby minimising the incidence of conflicts and disputes relating to land. With property right well defined and with good land management, people will be encouraged to make investments in improving land assets in view of the fact that the assurance of property rights in land increases the certainty that holders of such right will be able to benefit from improvements made on such land.<sup>689</sup> As considered in this paper, land serves as security for the relevant credit facility. Property right will ensure that there is enhanced access to credit facilities for the purpose of improving or developing land for economic purposes. This will ensure that land is put to the best use, thereby facilitating economic progress and social development.

It is suggested that long bureaucratic process involved in allocation of land should be streamlined in order to ensure timely approval of land allocation and subsequent transactions in land should be fastened. Also, the cost incurred in the process of getting the certificate of occupancy should be reduced to a minimum amount. Experts and high technical skilled manpower should be employed to minimize the problems of double allocation. The issue of consent should be critically looked at. As noted in the paper, the insistence on prior consent of the government either to assign or mortgage a property has been the greatest impediment to the development of real estate market in Nigeria.

<sup>687</sup> See *The Punch*, "Editorial", (Friday 8 June, 2012) 16.

<sup>688</sup> *Ibid.* see also, Frank, Timi & Malaye, Dino, "Open Letter to the President, Dr. Goodluck Ebele Jonathan: Review of Electricity Tariff, Untimely to the Nigerian people" *The Nation* (Monday 4 June, 2012).

<sup>689</sup> Banire, *op. cit.*, at 8-9.



Land Use Act reform/review currently embarked on by the National Assembly should be competed with dispatch.

Adequate and fair compensation should be paid promptly any time the government acquires individual land for public use. Compensation must be just and equitable, reflecting a fair balance between the public interest and the interests of those affected. In deciding on the amount of compensation, all relevant circumstances, including the current use of the property, the history of ownership and the use of the property, market value of the property and many more should be considered.<sup>690</sup> It should be noted that "fair compensation" is not always the same as the market value of the property; market value is but one of the items which must be taken into account when determining what would be a fair compensation. A wider range of socially relevant factors such as resettlement costs and, in appropriate circumstances, solace for emotional distress should consequently be taken into account.

To have rapid economic development, governments at all levels are therefore called upon to eradicate corruption within their domains. Ethical orientation is also necessary since breakdown in ethical social values and greed have equally been identified as causes of corruption. Corruption often flourishes in an environment where basic human rights are lacking, thus, government should, therefore, build and encourage a culture of respecting basic human rights in order to effectively challenge corruption. Government as well as everyone is called upon to cultivate the culture of honesty, transparency and zero tolerance to corruption if we are to have meaningful economic development in Nigeria.

---

<sup>690</sup> See Khoza, *op. cit.*, at 203. See also. *Haakdoornbult Boerdery CC and Others v Mphela and Others* 2007 (5) SA 596 (SCA) para 48; *Mphela and Others v Haakdoornbult Boerdery CC and Others* 2008 (4) SA 488 (CC) para 13.