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PLEDGE OF LAND IN NIGERIA: A CALL FOR LEGAL REFORMS

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Abstract

In many developing countries, including those in Sub-Saharan Africa, the use of land as an economic asset to attract and generate capital for development remains underutilized. This study examines the legal devices available in Nigeria for using land as security to access loans, with particular emphasis on the pledge of land. It provides an overview of the concept of land pledge as a form of security for obtaining small- and medium-term credit and identifies the key challenges associated with its use in the context of sustainable land use and planning. Adopting a doctrinal research methodology, the study draws on both primary and secondary legal sources. The findings reveal that both customary and common law conceptions of land regard it holistically, encompassing the physical land and all fixtures permanently attached to it. However, the legal framework governing land-based securities faces numerous challenges, particularly regarding the customary pledge system, which requires significant reform to align with the provisions of the Land Use Act of 1978. Moreover, the Land Use Act itself is fraught with structural deficiencies that hinder its effectiveness in promoting land as a viable security for commercial development. The study concludes by recommending comprehensive legal reforms to the laws governing mortgage, pledge, and charge in Nigeria to enhance the accessibility and utility of land as collateral for financial lending.

Keywords: Food security, land, mortgage, pledge, security

1. Introduction

Land resources could be harnessed for rapid economic transformation, poverty reduction, employment generation, and food security.[1] However, Nigeria's current state, marked by food insecurity, high unemployment, and widespread poverty, indicates that these resources have not been effectively utilized as drivers of national development.[2] Despite its verdant fields, Nigeria lacks food security, committing vast resources to importing food and other goods that could be produced locally.[3]

The rationale for conducting this study is the limited research on security devices for land use beyond mortgages. Conducting this study would assist legal practitioners, policymakers, the government, and the courts in understanding the constraints affecting the use of these devices under Nigerian law. It will also contribute to the existing literature in this area. This paper examines the legal framework of land pledge, identifying the challenges confronting its use. Additionally, it provides an overview of the legal framework governing security on land under Nigerian property law, explores land pledge as a mechanism for securing access to loans, and discusses the challenges associated with its application.

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[1] Jintao Li,Haaran Dong & Shaoxing Li, 'Economic Development and Optimal Allocation of Land Use in Ecololgical Emigration Area in China' (2024) 142 *Land Policy* <https://www.sciencedirect.com/science/article/abs/pii/S0264837724001315> accessed 18 April 2025.

[2] J Chikaire, *et al*, 'Land Reform for Sustainable Development and Poverty Reduction in Nigeria' (2011) 3 (3) World Rural Observations <https://www.researchgate.net/publication/354879696_Land_Reform_For_Sustainable_Development_And_Poverty_Reduction_In_Nigeria> accessed 18 April 2025.

[3] S Odeniyi, 'Nigeria Spent 21tn on Food Importation-Report' *Punch* (Lagos, 30 March 2025) <https://punchng.com/nigerians-spent-n21tn-on-food-importation-report/> accessed 19 April 2025.

2. The Concept of Security

The Longman Dictionary defines security as things that are done to keep a person, building or country safe from danger of crime.[4] In law, it is defined as collateral given or pledged to guarantee the fulfillment of an obligation, especially the assurance that accredited will repaid (usually with interest) any money or credit extended to a debtor.[5] The use of the term 'security' in this paper is in line with the definition given by the editors of the Black's Law Dictionary. Its use will be restricted to secured land transactions, and to the exclusion of other forms of securities in law not involving land.[6] This captures the position of the English court which noted that:

> *Security is created where a person ("the creditor") to whom an allegation is owed by another ("the debtor") by statute or contract, in addition to the personal promise of debtor to discharge the obligation, obtains rights exercisable against some property in which the debtor has an interest in order to enforce the discharge of the debtor's obligation to the creditor*.[7]

By its nature, security is an interest vested in 'the creditor' in certain property by 'the debtor' over a property in order to satisfy an obligation owed to the creditor by the debtor or some other person.[8] Security includes investment stocks and company shares suitable for stock exchange.[9] Another legal scholar, Goode also sees security as the right to pay a party from the property of another for the loan given or the benefit derived.[10] The above definitions clearly show the two features of the concept of security. First, that it could be created by the consensus of the parties and second, it may be created over an interest in the property and not the property itself.[11] Some securities are created by the operation of law. These give rise to legal rights over some property. In addition, security may be created when the *'res'* may be delivered upon the agreement that payments should be made in installments until the whole price is paid. In such instances, the service may be enjoyed by the party pending the full payment.[12] By contract, a seller may withhold title until the payment of full purchase price[13] and a trust may be made in favour of a party under a credit arrangement.[14]

Moreover, security interest has distinctive characteristics which set it apart from other forms of interests. These are: the creditor shall be capable of using it in repaying the debt; the debtor's redemptive right over the property when the payment is made and finally, creditor's duty to return the property to the debtor when the purpose of security has been extinguished.[15] From the above, it may be argued that security is given to ensure debt repayment. Security could be divided into real or personal security. Real security is the proprietary right conveyed to the creditor. In this, the actual possession of security is primary.[16] The personal security assures the creditor of the guarantor's secondary liability, which happens when the principal debtor is unable to fulfill the promise to repay. A contract of indemnity, on the other hand, makes the indemnifier primarily liable for the loan, upon the default of the principal debtor.[17] Both are useful in commercial transactions.

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[4] *Longman Dictionary of contemporary English for Advanced Learners* (new Edition, Pearson Longman, 2009), 1574.
[5] BA Garner(ed), B*lack's Law Dictionary* (9th Edition).
[6] These include debenture, share certificates etc.
[7] *Bristol Airport PLC v Powdrill* (1990) 2 All E.R 492 at 502
[8] Sykes and Walker, *The Law of Securities* (5th edn, Law Book Company Ltd, London, 1993) 12.
[9] IO Smith, *Nigerian Law Secured Credit* (Ecowatch Publications (Nigeria) Limited, Lagos, 2001) 4.
[10] RM Goode, *Legal Problems of Credit and Security (*2nd Edition, Sweet and Maxwell, London 1988) 1.
[11] Ibid.
[12] Smith 2001(note 9) 244-255.
[13] This is exemplified by retention of title clause in commercial agreements.
[14] *Barclays Bank Ltd v Quist Close Investment Ltd* (1970) AC. 567.
[15] Smith (n 9) 6.
[16] Ibid, 8.
[17] Ibid, 12.

The Nigerian legal system regulates provision of security for loans. Bank and other Financial Institutions Act (BOFIA) provides, among other things for the credit limit beyond which no loan could be offered without security.[18] Also, Failed Banks (Recovery of Debts) and Financial Malpractices in Bank Act 1994 (as amended) was put in place to mandate banks to demand security for granting credit.[19] Hence, provision of adequate security in support of a loan is mandatory. Lending institutions could no longer grant unsecured loans. Statutes in Nigeria have provided that security should be given by the debtor, first, to ensure that the creditor is able to recover the debt upon default of the debtor and to set priority over all other competing creditors of the debtor as regards the property set aside.[20] On the part of the debtor, the fear of losing the property set aside as security to the creditor, will aid the repayment of the loan.[21]

3. Using Land as Security

The understanding of the conception of land under the Nigerian legal system is central to the use of land as security for loans. Both parties must know the extent of the rights that go along with the transfer made for the repayment of the loan. Securities for loans could be made on land through mortgage, lien, charge and pledge.[22] While the first three are inherited from British heritage, pledge of land is indigenous to Africa, and is an incident of customary tenure. In this study, the focus of analysis shall be the pledge of land.

3.1 Pledge of Land

This is the oldest of the secured credit devices in Nigeria,[23] and arguably in the world.[24] It is created in common law when the pledgor (the debtor) gives up the possession of the pledge property (be it land or chattels) to the pledgee to reap rents and profits from, pending the discharge of the principal and interest of the debt owed.[25]

3.1.1 The English Pledge

There were two major ways of creating pledge at common law, namely: *vivium vadium* or living pledge and *mortum vadium* or dead pledge.[26] A living pledge is created where the lender took possession of the security and collected rents and profits to defray principal and interest while a dead pledge operated when the lender took possession and collected rents and profits to discharge interest only.[27] Pledge of land in English Law had become obsolete and had given way to common law mortgage under which proprietary interest would be conveyed to the lender as collateral.[28] With the intervention of equity on the legal regime of mortgage,[29] an English pledge has been modified to accept only chattels, while mortgage accepts both land and chattels. For a pledge to operate, the lender must take physical control or custody of the security for the loan. Hence, the movable attribute of chattel has made it a very suitable security for English pledge. [30]

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[18] S. 20(1) (b) and S. 20(2) (a)(b), Cap B3, LFN 2004.
[19] S. 15(1) (a), Cap F2 LFN 2004.
[20] E Essien, *Law of Credit and Security in Nigeria* (2nd edition, Toplaw Publishments, 2012)54.
[21] Ibid
[22] Smith (n 9).
[23] Essien (note 20) 43.
[24] JH Wigmore, 'The Pledge-Idea, 'A Study in Comparative Legal Ideas,' *Harvard Law Review* X (1896 – 1897), 321 – 350.
[25] WS Holdsworth, *A History of English Law* Methuen, (1953) 3, 128 https://archive.org/details/in.ernet.dli.2015.32455 accessed 21 April 2025.
[26] Ibid.
[27] Ibid.
[28]Smith (n 9) 107.
[29] Ibid
[30]LA Sheridan, *Rights in Security* (Collins, 1974), 145.

3.1.2 Customary Pledge

In Nigeria, land is the subject of a pledge recognised by the LUA.[31] It has been in use in traditional societies in Nigeria and Sub-Saharan African countries such as Ethiopia, Kenya, Tanzania, Uganda, Botswana, Lesotho, Mali, Sierra Leone, Liberia, Swaziland, Zimbabwe and Nigeria, from time immemorial.[32] Initially, the system was not limited to the use of land but also accommodated the use of various valuables (real or personal) including human beings to secure debt.[33] Among many ethnic groups in Sub Saharan Africa, pawning of human beings, known as *ofa* among the Yoruba people of southwestern Nigeria operated fully up until the abolition of slavery in West African 1807.[34] However, since its abolition, the common practice is for the individual, or the family to pledge land in return for money, or money's worth.[35] The concept of customary pledge has since been modified to exclude the pledge of human beings in line with the constitution, domestic laws and international treaties and conventions.[36] The devise is used to make agricultural land available to farmers.[37]

This practice has provided a simple and flexible way of accessing loans to develop the agricultural industry and improved productivity.[38] Unlike the mortgage, the simple, and flexible way in which customary pledge could be created with little or no formal documentation made it a useful instrument for promoting local agricultural industry and commerce. It also accords with the principles of customary law under which the bulk of the land in Nigeria, and indeed, Sub-Saharan African is held.[39] A customary pledge permits the borrower to give possession of land to a lender for the period of the pledge.[40] This definition highlights three things. First, that pledge provides an opportunity for the pledgor to use his land as security. Second, that the possession of security is given to the pledgee.[41] Third, that the use of the security by the pledgor is for the period of the debt only and it must be returned. This definition clearly marks out a pledge from an English mortgage. Its critical feature is that it cannot be forfeited or foreclosed, whatever the length of time. In *Adjei v Dabanka*,[42] pledge is conceived as follows a kind of indigenous mortgage by which the owner-occupier of land, in order to secure the advance of money, or money's worth, gives possession and use of the land to the pledge creditor until the debt is fully paid or discharged. In this case, it was shown that a pledge gave only possession, not ownership.

This presupposes that "a pledge of land is normally, and from its inception has been, a security transaction: the pledged land is given as security for the borrowed sum, as is the case of the mortgage in English law."[43] Although the transfer of possession deprives the debtor of the use the

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[31] S. 51 (1) LUA.

[32] Gershon Feder & Raymon Noronha, *Land Rights Systems and Agricultural Development in Sub-Saharan Africa* (Research Unit, Agriculture and Rural Development Department. The World Bank, 2007) < https://documents1.worldbank.org/curated/en/421451468913803450/pdf/Land-rights-systems-and-agricultural-development-in-sub-Saharan-Africa.pdf> accessed 20 April 2025.

[33] AG Adebayo, 'Precolonial Institutional Frameworks for Moneylending and Loan among the Yoruba' (1992)(38) Paidenuma 163< https://www.jstor.org/stable/40341643> accessed 22 April 2025.

[34] Patrick Manning, 'Slavery and Slave Trade in West Africa, 1450-1930' (2016) *The History of African Development* < https://www.aehnetwork.org/wp-content/uploads/2016/01/Manning.Slavery-and-Slave-Trade-in-West-Africa-1450-1930.pdf> accessed 21 April 2025.

[35] Adebayo (n 33).

[36] Constitution of the Federal Republic of Nigeria 1999(CFRN); Universal Declaration of Human rights 1948; Convention of the Rights of Child 1989; Convention on the Elimination of all Forms of Discrimination against Women 1979.

[37]Smith (n 9)109.

[38] Ibid.

[39] Feder & Noromha (Note 32).

[40] TA Elias, *Nigerian Land Law,* (4th edition, Sweet & Maxwell, 1971), p. 153-154.

[41] IO Smith, *Practical Approach to Law Relating to Property in Nigeria* (Ecowatch Publications (Nigeria) Limited, 2013) 110.

[42] (1930) I WACA, 66-67.

[43] Smith, (n 9) 64.

land could have been put to repay the debt,[44] it remains a key aspect of the customary pledge.[45] The possession is to ensure that security is safe, while pressure is mounted on the pledgor to repay the loan. Although the pledgee has a right to use the pledged land, it must be put to ordinary use. Hence, planting of economic trees or erection of permanent structures is forbidden, unless express agreement exists. Elias CJN (as he then was) dwelt on this in *Okoiko v Esedahide & Anor* when he said:[46]

> *The very nature of a customary pledge, which is perpetually redeemable, is that a pledgee has only a temporary occupation licence and that he must yield up the pledged land as far as possible in the form he took it originally. This means that he must put it to only ordinary use so that its return to the pledger should be unencumbered in any way.*

The existence of a customary pledge presupposes that pledgee shall occupy and use the pledgor's land and enjoy rents and profits until the latter is discharged of the debt. Furthermore, a land pledged could never be lost, forfeited or foreclosed, unlike a mortgaged land which could be, or caught up with, limitation laws.

3.1.2.1 Creation of Customary Pledge

A customary pledge could be oral or written. If the agreement is oral (parol), there must be at least a witness to attest to the transaction. In *Okpokpo v Uko,*[47] the Court of Appeal remarked that a customary pledge, unlike a mortgage under English Law, is mainly in parol and not in writing, but there should be witnesses to the transaction. It may also be created in writing.[48] However, the written document should indicate the true nature of the agreement. It should state clearly its terms and conditions and be witnessed. The oral nature of the contract in the customary pledge may lead to confusion as to the true nature of the transaction. Hence, this feature may discourage banks from accepting land pledge.[49] In creating a customary pledge, the following requirements must be complied with. First, where the land belongs to the community or the family, the consent of the chief or the family head and the principal members should be obtained.[50] This could be explained by the concept of customary land ownership which vests the rights in family/community in the corporate entity while the individual is entitled to a right of use.[51]

3.1.2.2 Compliance with Statutes

The LUA governs land management and control in Nigeria.[52] Therefore, a customary pledge must comply with its provisions. The pledgor must take cognisance of the half hectare rule in undeveloped land designated as urban.[53] The pledgor/borrower cannot pledge more than the maximum quantum to which he has a right to in law.[54] Second, the Federal Capital Territory (FCT), a customary pledge can only be created on a statutory right because a customary right does not exist.[55]

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[44] RO Adegboye, 'Redemption of Pledged Property through Rural Credit' in *Proceedings of the 1972 Annual Conference of the Nigerian Economic Society,* 181-189.
[45] Essien (n 20) 63.
[46] (1974) 3 SC 15, 31.
[47] (1997) II NWLR (Pt. 52) p. 94 at p. 112, Paras D-E.
[48] *Rotibi v Savage* (1994), 17 NLR 77
[49] Essien (note 20).
[50] *Oyebanji v Okunola* (1968) NMLR 22; *Lukman v Ogunsusi* (1972) I All NLR (Pt. 2) 41: IO Smith 2013 (note 43).
[51] *Amodu Tijani v Secretary of Southern Nigeria* (1921) AL, 399.
[52] Ss. 5,9,10, 21 & 22.
[53] Land Use Act 1978, Cap L5, LFN 2004, S. 34(5)
[54] Ibid, S. 34(5) and 6(5).
[55] *Ona & Anor v Atenda* (2000) 5 NWLR (Pt. 656), 244.

3. Developments in Customary Pledge

Due to increasing modernisation, and the need for funds for personal, and commercial development, the customary pledge in Nigeria is developing into variants which accommodate modern incidents and are amenable to equity. Three variants of customary pledge have emerged to harness this traditional means of accessing credit for development.

3.1 Traditional Pledge

This is the oldest. The pledgee reserves the rights to reap the fruits of the land until it is redeemed, while the pledged sum would not be deducted from the excess earnings. The earnings from the security are conceived as profits to which the creditor is entitled as a reward for his labour.[56] This appears to be unfriendly to the pledgor who is deprived of possession of his land at the commencement of the pledge and may not have any means of livelihood or access to land for the entire period.[57] However, the pledgor is entitled to redeem the land in perpetuity.[58]

3.2 Term Pledge

This is for a fixed, agreed term after which it comes to an end, subject to the right of the pledgor to redeem at any time even before term ends, but with reasonable prior notice to the pledgee.[59] The term may be several calendar years, a number of farming seasons,[60] or flood seasons.[61] At the end of the period designated, the pledge will lapse, and the outstanding debt must be paid, failing which the creditor will be free to enforce the pledge through judicial sale.[62] Except by the order of the court, the pledgee has no power to sell the pledged land to discharge pledgor's obligations, or to foreclose the security.[63]

3.3 Self-Liquidating Pledge

The pledgee recovers his debt by using the proceeds of the land to extinguish the pledge. He will therefore vacate the land and release it to the owner, when the pledge is eventually paid. This is termed 'modern' pledge because it is the more frequently used in recent times. Its self-liquidating style complies with the doctrine of equity. In *Nwabuoku v Ottih,*[64] the court, by inference, rejected the argument that it was a perpetual pledge. Rather it held it to be a self-liquidating pledge under which the pledgee was entitled to collect rents on the property, until he had reimbursed himself up to the amount of the debt. The court thereby ordered that an account of rents from the premises should be rendered from the date of the pledge to the date of the judgement, and if the account showed any amount over and above the loan sum, it should be paid over to the pledgor, after the deduction of the amount expended on the repairs, insurance etc. of the property.

4 Legal Constraints to the Operation of Pledge

Many countries in Sub-Saharan Africa, including Nigeria, inherited Received Laws from their colonial heritage. Through these laws, various innovations were introduced to complexity which made the management of land difficult. In Nigeria, multiple land tenure systems have operated

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[56] BO Nwabueze, *Nigerian Land Law* (Nwamife Publishers, 1982) 278.
[57] Essien (note 20) 67.
[58] *Okoiko v Esedalue* (note 46)
[59] D Forde, *The Yoruba-Speaking Peoples of South-Western Nigeria* (e-book, 2017) 69 < https://scite.ai/reports/the-yoruba-speaking-peoples-of-south-western-Nl90dAN> accessed 20 April 2025.
[60] AKD, Kludze, *GHANA 1: Ewe Law of Property* (Sweet & Maxwell, 1973) 471 < https://discovered.ed.ac.uk/primo-explore/fulldisplay?vid=44UOE_VU2&tab=default_tab&docid=44UOE_ALMA21107134000002466&lang=en_US&context=L&query=sub%2Cexact%2CNkrumah%2C%20Kwame%2C%201909-1972> accessed 20 April 2025.
[61] NA Ollenmu & GR Woodman, *Principles of Customary Land Law in Ghana* 2nd ed (CAL Press, 1985) 103.
[62] Ibid.
[63] These are based on the rule of perpetual redeemability
[64] (1961) All NLR 507.

which are the customary land tenure, English law doctrine of estates and the uniform land tenure law under the LUA.[65]

4.1 Constraints to Pledge in Customary Land Tenure

This involves the application of indigenous customs, subject to their not conflicting with the national laws or principles of justice and morality and is relevant to the specific community and situation.[66]

4.1.1 Repugnancy Test

The repugnancy test,[67] applied in many parts the Sub-Saharan Africa. By Article 52 of the Order in Council 1897, customary law applied in the East African Protectorate covering Kenya, the Great Rift Valley and Uganda, subject to the repugnancy to justice and morality test.[68] In Nigeria, Native Courts Ordinance 1933, Section 10 contained the repugnancy test as "repugnant to national justice or morality."[69] At independence in 1960, Native Courts (Amendments) Law retained this clause, which has since become a part of the Nigerian High Court Acts and Evidence Act.[70] The clause is inclusive in the Section 19 of the 1876 Supreme Court Ordinance of Gold Coast which states that "the Supreme Court shall enforce the observance of any law or custom existing in the colony not being repugnant to natural justice, equity and good conscience, and not incompatible directly or indirectly with any local enactment than existing". These are not limited to the English colonies as French colonies also had their own form of the repugnancy clause. For example, while the indigenous law of Cameroon did not recognise a particular legal liability, the courts applied the Principles of the French Civil Code to impose it.[71]

Through this, the rule of pledge which requires that the pledgee assumes possession of the land, and reap its fruits, in return for its perpetual redeemability is tampered with in *Nwabuoku v Ottih,*[72] by using principles of equity to defeat the pledgee's enjoyment of the profits on the land, and introduce rent, like the English mortgage.

4.1.2 No Limitation Period

A pledge has no limitation period. It can be redeemed at any time and the pledgee has no right, using any subterfuge, to put any clog in the way of redemption.[73] This is a major difference from the situation of a mortgagor whose equity of redemption is limited by the law by sale.[74] The implication of this is that the debtor can recover the security even when the period of payment is over. In a financial economy characterised by certainty of the loan recovery, creditors will avoid pledge transactions if this rule subsists.

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[65] LUA, S. 48.

[66] ME Nwokocha, 'Customary Law, Social Development and Administration of Justice in Nigeria (2016)(7)(4) *Beijing Law Review* 430-442 < https://www.scirp.org/journal/paperinformation?paperid=73207> accessed 21 April 2025.

[67] R Atuguba, 'Customary Law Revivalism: Seven Phases in the Evolution of Customary Law in Sub-Saharan Africa. *The McGill Journal of International Law and Legal Pluralism* < https://law.ug.edu.gh/faculty/prof-raymond-atuguba> accessed 21 April 2025.

[68] F Kariuki, 'Customary Law Jurisprudence from Kenya Courts: Implications for Traditional Justice Systems' (2015) (8)(1 *University of Nairobi Law Journal* 2 accessed 21 April 2025.

[69] JND Anderson, 'Conflict of Laws in Northern Nigeria' (1957)2(1), *Journal of African Law* 87 at 88 <https://www.cambridge.org/core/journals/journal-of-african-law/article/conflict-of-laws-in-northern-nigeria1/DF48F8E41EACF77EA678CA96128C9713> accessed 21 April 2025.

[70] Evidence Act 2011 (as amended), S. 18(3)

[71] Ibid.

[72] (1960) All NLR 507.

[73] *Okoikwo v Esedalue* (supra); *Nwachukwu v Anyawu (1993) 8 NWLR (Pt.311) 307*.

[74] *Ikeanyi v Adighogu* (1957), 2 ERLR *38 at p. 39* and *Agbo Kofi v Addo Kofi.* (1933) 1 WACA 284.

4.1.3 Limited Enforcement Options

Methods of enforcing the repayment of loans in customary pledge transactions are limited to judicial sales, community mediation and the use of witnesses.[75] While the judicial sale proceedings may be cumbersome and frustrating,[76] community mediation and use of witnesses are not suitable for modern financing.[77] The pledgee has no power of sale and no right of foreclosure like an English mortgagee.

4.1.4 Perpetual Redeemability

Although this protects security from being taken over by the pledgee who is in a stronger position financially, it is a major setback for the institution of customary pledge. No serious creditor in modern times will want to invest funds in financing a debt that has no limitation period for enforcement. In Nigeria, if the nature and purpose of the transaction could be traced, no matter the number of years that have passed, and the extent of permanent improvements of the pledgee, the land can still be redeemed. In *Leragun & Ors v Funlayo,*[78] the defendant sued for the recovery of land pledged more than 30 years during which the defendant had planted economic trees. It was decided that the planting of economic trees and passage of time could not defeat the right of the plaintiff to recover the pledge

4.2 Constraints to Pledge in Land Use Act 1978

4.2.1 Uncertainty of Title

The Land Use Act 1978 introduces uniform land tenure to Nigeria, when it conferred the control of land on the State Governor, to hold it in trust for citizens of Nigeria.[79] The implication of this is that the ownership rights to land which have existed over the years are divested from individuals and communities exercising such under the customary tenure, and transfers such to the Governor form of rights of occupancy. The right of occupancy introduced by the Act is *sui generis* right which is neither a freehold interest, a licence nor even a lease, but a unique type of right, the nature of which it does not define. Although the right is not defined by the LUA, its precursor, the Land Tenure Law defines it as "a title to the use and occupation of land.[80] The right of occupancy can be statutory, or customary granted or deemed granted.

4.2.2 Erosion of Ownership Rights

Ownership rights which existed under the customary law have been eroded with the Land Use Act 1978. Hence, the perpetual redeemability of pledge appears to be threatened by the quantum of interest which now exists under the rights of occupancy.[81] However, new ideas and innovations have been incorporated into the property law in Nigeria, especially pledge, which has positive values on land use and development. These include the incorporation of common law rules of contract which require land transactions to be in writing, as against the parol contract of the olden days and the development of varying forms of pledge, such as term pledge.

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[75] *Okoikwo v Esedalue* (supra).
[76] JE Moses & MS Sheka, 'An Evaluation of the Concept of Enforceability of Customary Law and its effect in Nigerian Administration of Justice' (2021) 4 MUNFOLIJ 97 < <https://journals.ezenwaohaetorc.org/index.php/MUNFOLLJ/article/download/1824/1855> accessed 20 April 2025.
[77] Ibid.
[78] (1956) WRNLR 167.
[79] LUA, S. 1
[80] IO Smith, 'Security of Title in Nigeria: Any hope for the Future? in IN Ikhariole (ed.) *Law and Development* (LASU Law Seminar Series) 49; A Utuama; 'The Crocodile Tears in *Savannah Bank v Ajilo* (1989) 2 (4) *JRBRL* 20; Essien (note 9).
[81] LUA, Ss. 5 & 6.

4.2.3 Nature of Certificate of Occupancy

The right of occupancy system introduced the issuance of a certificate of occupancy by the Governor of a state.[82] A certificate of Occupancy merely evidences a Right of Occupancy and does not confer a title or interest inland. Hence, the Act has not provided a conclusive means of proving one's entitlement to a right of Occupancy.[83] The certificate merely raises a presumption of title. Thus, in *Azi v Registered Trustees of the Evangelical Churches*, the court ruled that the issuance of Certificate of Occupancy on any land would not cure defects of title of the holder. The C of O granted to a claimant who could not prove a better title was declared invalid.[84] The effect of setting aside the C of O for whatever reason has left the mortgagee, the pledgee or whosoever has accepted the security of the land without any protection.

4.2.4 Consent to the Security of Land

The judicial interpretation of the consent provision has exhausted much judicial ink and has burdened the courts like no other statutory provision in property law.[85] Section 21(1) states that the consent of the Governor must be "first had and obtained." In *Savannah Bank v Ajilo,*[86] the party who obtained invalid Governor's consent was allowed to profit from its own wrongdoing. This had created severe challenges for the lending industry, as unscrupulous debtors sought to exploit the judgement to avoid the mortgage deed that they signed. In *Onamade and Ors v ACB,*[87] the Supreme Court affirmed that no alienation of a statutory right of occupancy could take place without the Governor's consent. Also, in *International Textile Industries v Aderemi,*[88] the matter was decided in line with Ajilo's case that the holder of an SRO who alienates or transfers his right should obtain the consent of the Governor to make transaction valid. The unnecessary delays and inconsistent judicial decisions emanated from Nigerian courts have created enormous challenges for the use of land as security. Mortgage transactions and pledges which involve alienation of interests in land require the Governor's consent. In *Awojugbagbe Light industries v Chinukwe,*[89] the five-year delay in procuring Governor's consent was the subject of the litigation. The apex court held that although the consent was delayed, the mortgage deed was valid, having successfully passed through the contract stage.

4.2.5 Pledge of Rural Land

A holder of customary right of occupancy granted by the local government has no power to pledge a land more than 500 hectares for agricultural purposes and 5000 hectares for grazing purposes, except with the consent of Governor of the State where the land is located.[90] The implication of this is that the mortgagor could not immediately raise fund from the land without the long and tortuous process of Governor's consent. Second, an unwary creditor may incur the wrath of the law which may affect the validity of the contract, if the land should exceed the statutory bar. Putting the bar for agricultural and grazing purposes has the disadvantage of making large scale agricultural practices impossible, as this continues the close tenure practices under the customary tenure holding of the families and the communities. Perhaps, the greatest problem confronting the creation of a valid pledge is section 36(5) of LUA which forbids the transfer of rural lands deemed granted for all purposes. It states that:[91]

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[82] Ibid, S 9(a)(b)(c).
[83] DE Nelson, 'Marriage of Land as Security under the Land Use Act 1978 (2019) (11) The *Nigerian Juridical Review* 137 < https://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/Article-7-Mortgage-of-Land-as-Security-under-the-Land-Use-Act-1978-Dorothy-E.-Nelson.pdf> accessed 21 April 2025.
[84] Ibid, 136.
[85] E Chianu, *Law of Sale of Land* (New Systems Publishers 2009) 196.
[86] (1999) 8 NWLR (Pt 614) 268.
[87] (1997) 1 NWLR (Pt. 480) 123.
[88] (1999) ^ SC (Pt. 1)1.
[89] (1995) 4 NWLR (Pt. 390) 379.
[90] LUA, S. 6(2).
[91] Ibid, S. 36(5).

> *No land which this section applies shall be divided or laid out in plots and no such land shall be to the alienation of rural lands, and it use for customary pledge and mortgage. Although transferred to any person, by the person to whom the land was vested aforesaid.*

The section makes the alienation of rural lands difficult.[92]

5. Conclusion and Recommendations

This study examined the use of pledge on land in Nigeria. Types of securities, consensual and non-consensual were examined. Mortgages, pledges and charges on land were discussed. Also, challenges confronting the use of pledges were identified to include those related to the operation of the Land Use Act 1978 and the customary land tenure. The study revealed that major securities recognised to access funds on land in Nigeria are pledges, mortgages and charges. A pledge involves the transfer of interests in land which requires the Governor's consent under the LUA. It was also found that due to uncertainty of title, controversies over Governor's consent and deemed grants of customary right of occupancy, the pledge as a security is encumbered with technicalities. While mortgage on land was suitable as debt security which the creditors would want for the safety of their funds, a pledge has inherent challenges that require urgent reforms. The following recommendations are hereby made, based on the outcomes of the study.

a. The LUA should be amended in a way to make the title granted by the Governor as statutory right of occupancy, and local government as customary right of occupancy certain, definite and understandable. Hence, the definition section of LUA should adopt the definition of the term 'right of occupancy' from section 1 of the Land Tenure Law.
b. The quantum of land that could be alienated for farming and grazing by the local government should be increased to give room for individuals and communities to pledge, and mortgage larger expanse of land for economic development.
c. Sections 21 and 22 of the LUA on consent provisions should be repealed so as to allow citizens' unfettered access to use of land resources for all purposes.
d. The bar on alienation of deemed customary grant in section 36(5) of the LUA is a setback for the continued operation of the customary land tenure and its incidents. It requires an amendment to enable easy transfer of land as a pledge, a mortgage or outright sale.
e. Rules of compensation under the LUA require reforms. Section 29 of the LUA should be amended to include value of land and its location in the determination of compensation, in line with section 4 of Public Land Acquisition Decree 1976.[93]
f. Current reforms which have made pledge contract to be in writing and the interest to be paid on the loan through self-reducing pledge should be encouraged. The perpetual redeemability should be reformed into a term pledge, while rules of equity should be used to foster accountability of the proceeds of a pledge.
g. Enforcing rules of mortgages should be harnessed for pledges in Nigeria. The current remedies based on judicial foreclosure and sale make loan recovery difficult.

[92] Smith (n 41) 112.
[93] Decree No 33.