



THE LAND USE ACT 1978 VIS-À-VIS SECURED CREDIT TRANSACTIONS IN NIGERIA: MONSTER OR MESSIAH?

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Abstract

For more than forty years, the Land Use Act of 1978 has been a fundamental pillar in Nigeria's legislative system regarding land related issues. Throughout its 45-year existence, this Act has functioned as the nation's main governing instrument for land tenure, ownership, and associated rights. This article analyses the connection between the Land Use Act of 1978 and secured credit transactions in Nigeria. This raises the question of whether the act is a detrimental force or beneficial entity in the field of legal theory. The Land Use Act was initially intended to resolve Nigeria's disorganised, informal, and seemingly obsolete land ownership arrangements. However, this has unexpectedly become a cause of complications and difficulties in secured credit transactions. This paper elucidates this paradox and emphasises the necessity of reassessing the Act's function in contemporary Nigerian jurisprudence. This article recommends the removal of specific clauses of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that established the Land Use Act of 1978 as a permanent part of the constitution. The argument is that repealing such a law will enable a country to adapt to the changing dynamics and current demands of its legal and economic environment. Nigeria can enhance its economic growth and development by eliminating this regulatory obstacle and establishing a unified and flexible environment for secured credit transactions.

Keywords – Land tenure, Credit transactions, Regulatory, Economy, Digitalisation

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Introduction

For over four decades, the Land Use Act of 1978 served as fundamental legislation in Nigeria concerning land matters, aiming to address the country's complex and often unregulated land tenure systems. This legislation has had a significant and far-reaching effect on the country's social, economic, and legal fabric, as it regulates land tenure, ownership, and other related issues. Given the evolving economic environment, there have been growing concerns regarding the Act's continued applicability to secured credit transactions. In an effort to answer this crucial issue, this article examines the intricate relationship between secured credit transactions in Nigeria and the Land Use Act of 1978. It addresses the question of whether the Act hinders the advancement of secured credit transactions or salvages the country's economy by navigating the complex land tenure landscape. The convergence of land laws and financial security has become a critical issue in Nigeria because of the country's economic success and growing need for secure financial transactions. Ultimately, this paper examines the complexities of this interaction and highlights the challenges that the current legal regime on land poses in secured credit transactions. It proposes potential remedies and revisions to reconcile the disparities between the Land Use Act of 1978 and the demands of contemporary economic endeavours.

Understanding Land

Land is considered essential to human life and serves as the foundation for all human activities. This forms the fundamental foundation of all social and commercial interactions. Human nature often compels us to seek a sense of belonging and connection with a specific society and location. This is often expressed in various cultures through a strong desire to own property, such as land or a house, as a way to establish roots.¹

Therefore, it is appropriate to provide a definition for the term "land." Land, as distinguished from bodies of water, is the solid, arid portion of the Earth's surface, according to a standard dictionary

¹ D. Chappela, Land law, 6th ed (London: Pearson longman, 2004) at 3-5; Gray K. & Gray S. F. Elements of land Law, 3rd (UK: Lexis Nexis UK, 2003) 2-3; Abugu U., Principles of the Land Use Act 1978 (Kaduna: Joyee publishers, 2008)1-2, Egute M.A. Essentials of Nigerian Land Law Makurd. Onaivi Publishing Company, 2002) at 1-2, Egwummou, J. Principles and Practice of Land Law (Enugu Onye Ventures, 2007) at104-105

definition.² The inclusion of not only the ground and subsoil, but also improvements such as buildings and trees situated on the ground, as well as bodies of water such as streams, seas, and rivers, could be considered acceptable. The concept of land is often debated, with some viewing it as a purely physical matter and others seeing it as a collection of abstract rights. This difference in perspective creates a lack of consensus on how to universally define land.³ Legislative provisions defining land are absent under Nigerian law.⁴ However, by examining a few pertinent statutory provisions, one can gain insight into the definition of "land." Section 18 of the Interpretation Act⁵ posits the following:

Land includes any building or any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals.

The Property and Conveyancing Law⁶ which applies in the states of former Western Nigeria provides that:

land includes land of any tenure and mines and minerals, whether or not severed from the surface, buildings or parts of buildings...] and other corporal hereditaments, also a manor, an advowson and a rent and other incorporeal hereditaments and easement, right, privilege or benefit in, over or derived from land.

The Registered Land Act⁷ which applies only to Lagos defines land as:

² Honsby, A.S., *Oxfords Advanced Learner's Dictionary of Current English*, 3rd edition (London: Oxford University Press, 1984) at p.472. See also Bird, R. Osborn's *Concise Law Dictionary* 7th edition (London: Sweet & Maxwell, 1983) at 195, where land is defined as any ground. Soil or earth whatsoever.

³ Gray & Gray (n1)

⁴ Nelson, D. "Real Property Management in Nigeria" *International Journal of Law and Contemporary Studies*, Volume 2 Number 1 & 2 2008 at 8.1.

⁵ Cap 123 Laws of the Federation of Nigeria, 2004. in the statute contained within the *corpus* of 1925 English legislation 'land' is described as including: land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts 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 rent and other incorporeal hereditament, and an easement right, privilege or benefit in, over or derived from land. This cumbersome definition is explored with variations, in many other interpretations, in sections like the Land Registration Act 1972, S. 17 and the Trustee of Land and Appointment of Trustees Act 1996, S.23(2); *Comm for Railways & Ors v. Valuer-General (1974)* & *Bernstein v. Skyviews Commercial Estates Ltd. v. Kato Kagatus Co. Ltd (1998)*

⁶ Cap 100, Laws of Western Region of Nigeria; The Law of Property Act, 1925 (English)

⁷ (1965) At the United Nations Conference in 1948 on Political Economy on Rural and Urban Land use, "land" was defined as (a) a space or room and surface upon which life takes place, (b) as nature or natural endowment including access to sunlight, rainfall, wind and other climate conditions and including soil and natural vegetation(c) as

Including all things growing on the land, buildings, and other things permanently affixed thereto and where land is covered with water, the land itself but does not include water or any mine, minerals, mineral oil, or mineral gas.

An Evaluation of the Debated Definition of Land

The term "land" in relation to the Nigerian context is subject to various definitions, which are not without criticism. Smith argues that the definition of 'land' provided in the Interpretation Act is restrictive⁸. Therefore, it is preferable to define land based on discernible features. The definition of land under the Property and Conveyancing Law of Western Nigeria is extensive, which is why Nwabueze expressed enthusiasm when endorsing it as follows:

It seems to be agreed even among laymen that land does not just mean the ground and its subsoil but also includes all structures and objects, such as buildings and trees standing on it. But the legal concept of land goes further than this and includes even abstract incorporeal rights like right of way and other easement as well as profits enjoyed by one person over the ground and building as belonging to another⁹.

According to Olawoye, land encompasses everything permanently affixed to the Earth's surface, subsurface, and air space above it. It also contains ponds and streams. However, objects placed on land do not necessarily constitute land regardless of whether they are made of soil products.¹⁰ The reason behind the deliberate exclusion of mineral oils from the Nigerian Interpretation Act could be that Section 3(1) of the Minerals Act¹¹ clearly stipulates that the Federal

consumption good, especially, when used as a site for dwelling parts of and it is property with legal connotations as the rights of ownership of individuals and responsibilities of ownership and sovereignty of government. Whilst *Sheldrek V.* defined land in its legal context to indicate not only the land surface but also the minerals found in and above the for a and fauna that subsists upon it, the water supplies it carries and the atmospheric advantages a enjoys Cf *Land Tenure in Basuto land* (1954) at p.2.

⁸ Smith, I.O Practical Approach to law of Real property in Nigeria (Lagos: ECOWATCH Publications Ltd. 1999) at 6-8.

⁹ Nwabueze, B.O. *Nigerian Land Law* (Enugu: Nwanife Publishers Ltd.1972) at 3

¹⁰ Olawoye, C.O., *Title to land in Nigeria*, (Evans Brothers Ltd, 1974) at p.9

¹¹ Cap 1,23 LFN, 2004.



Government of Nigeria owns and retains all property and control over all minerals and mineral oils in, under, and upon any land in Nigeria as well as overall rivers, streams, and water courses throughout the country. This ownership and control is subject to restrictions imposed by express grants made prior to the commencement of the Act. The Act stipulates that acquisition of a valid lease or licence from the Federal Government is a prerequisite for any individual to engage in mineral prospecting, mining, or transportation from land in Nigeria. While minerals are typically considered land, the Interpretation Act excluded them from the definition of land for the purpose of regulating and administering them. However, it is permissible for individuals to extract salt, iron ore, soda, and potassium from land located "outside" mining areas, as is customary.¹²

Nelson observed that the definition of land provided by the Registered Land Act¹³ includes all things that grow on the land, creating the perception that emblements are considered part of the land. However, under the common law, emblements are excluded from the concept of land. Further clarity is required, particularly on the inclusion of emblements.¹⁴

In Nigeria, contention and discord surround the customary legal interpretation of property ownership. Obi emphasises an intriguing attribute of African customary law, namely, the exclusion of vegetation and objects connected to the soil from the definition of land¹⁵. As a result, dwellings and economic trees are not considered to be complicit within the property boundaries on which they are located.¹⁶ Lloyd argues that Yoruba Customary Law recognises an explicit demarcation between the land and any alterations or enhancements applied to it.¹⁷

A Controversial Perspective on the Land Use Act 1978 and the Growth of Securities

¹² Egwummou (n1) 82.

¹³ Egwute (n1) 1

¹⁴ *Ibid* at 1-2. Bryan A.G., Blacks Law Dictionary 9th Ed., for the definition of the term emblements at p 599 as the growing crop annually produced, as opposed to a crop occurring naturally.

¹⁵ The Land Use Act 1978 defines "improvements or unexhausted improvements" as anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person action on his behalf, and increasing the productive capacity, the fencing, wells, road and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce. But Coker states categorically that in any application of the term, 'land' includes buildings thereon. C f. Coker, *Family Property Among the Yorubas* at p.65. Ollennu, *Customary land law in FGhan*, 1962 at p.2 also support the above view with regard to the customary law of Ghana.

¹⁶ *Ibid*

¹⁷ *Ibid*



The Land Use Act of 1978, a fundamental component of Nigeria's legislative structure, has been scrutinised because of its influence on the expansion of securities in secured credit transactions. This perspective challenges the efficacy of the Act and its alignment with the contemporary financial security requirements. Controversial opinions hold that the provisions of the Act impede the expansion of the securities industry. The rationales supporting this perspective are diverse¹⁸. Real estate stakeholders in Nigeria have criticised the controversial Land Use Act as a significant barrier to the creation of new dwellings. Its removal from the Constitution and a thorough evaluation by experts are necessary for revisions to become more feasible. They contend that permitting state governors to retain authority over property will impede significant expansion in the real estate industry.¹⁹

It has been argued that the Land Use Act of 1978²⁰ is a Greek gift to Nigeria's legal system. The Land Use Act has been criticised because of its controversial nature. It has been argued that the legislation has led to uncertainty in land tenure, posing challenges for financial institutions when considering land as collateral for loans. The Act's intricate legal framework, especially regarding land use, may deter lenders and borrowers from participating in secured credit transactions because of burdensome procedures and potential conflicts. The inconsistent application of the Act across the nation adds another layer of complexity to the legal environment. Some critics believe that the Land Use Act should be reformed to better align with current economic needs. This could involve clarifying land tenure rights, streamlining legal processes, and establishing a more stable and secure environment for credit transactions.²¹ Legal scholars concur that the Land Use Act 1978 is seen more as a formidable entity than a saviour, posing a confusing dilemma.

This article aims to present a clear overview of the provisions of the Land Use Act 1978 and its impact on secured credit transactions in Nigeria. This highlights how these provisions have

¹⁸ O Uzoamaka, C Chisom, N., and U Nnamdi, 'Critique of Nigerian Land Use Act of 1978' (2021) 11 *IJESC* 28115.

¹⁹ A Ukaejiofo, 'Perspectives in land administration reforms in Nigeria' (2008) *Journal of the Environment Studies* 5(3) 43.

²⁰ A Gift given or a favour done with a treacherous purpose; an allusion to the story of the wooden horse of Troy used by the Greeks to trick their way into the City of Troy.

²¹ B Okafor and E Nwike 'Effects of the Land Use Act of 1978 on rural land development in Nigeria: a case study of Nnobi' (2016) 4 *British Journal of Environmental Sciences*, 3, 1-16.



transformed investors' dreams into nightmares. Thus, they are categorised in the following subsections:

Subjective views and Relative Opinions about the Nature of a Right of Occupancy

Legal scholars have extensively discussed and debated the definition and implications of the right to occupation. There is a multitude of perspectives and theories on this subject.²² Adeoye argues that the Land Use Act of 1978 establishes a lease-like interest, while Essien²³ disagrees and believes that the Act creates a different and separate interest from a lease, which contradicts it. Through their subjective reasoning, intellectuals have discussed the nature of the right of residence in relation to the Land Use Act of 1978 more concerning than practical. Offering contrasting perspectives on the nature of the right of occupancy under the Land Use Act of 1978, the Act establishes an interest that is separate and incompatible with a lease. The debate surrounding the right of occupancy and the Land Use Act of 1978 has become more problematic than practical because of intellectual gladiators' subjective reasoning.

Uncertainty of Title Under the Act

Although the Act was intended to provide a framework and systematise property rights, it also generated specific difficulties regarding the reliability of land ownership documentation. An important factor of confusion within the Land Use Act is the regulation surrounding the issue of Certificates of Occupancy (C of O), which serves as evidence for the Right of Occupancy (ROO). Section 9(i)(c) which states thus: "It shall be lawful for the Governor when any person is entitled, to issue a certificate under his hand in evidence of such Right of Occupancy." It is important to note that this legislation alone does not grant complete and unambiguous land ownership. It simply functions as a proof of pre-existing entitlement.

It is evident from the language in the preceding provision that the Certificate of Occupancy, issued by the Governor, is merely "evidence" and does not establish an interest or title to land under the

²² P O Adeoye, *The Nature of the Right of Occupancy under the Land Use Act 1978*

²³ E E Essien, *Law of Credit and Security in Nigeria* (Golden Educational Publishers, Uyo 2000) p. 119; R W James *Nigerian Land Use Act Policy and Principle* (University of Ife Press Ltd, 1987) pp. 93-95; J A Omotola, *Essays on the Nigerian Land Use Act* (Lagos University Press, Lagos 1980) pp. 12-25

Land Use Act of 1978. Hence, a Certificate of Occupancy is not conclusive evidence for a superior title. Moreover, when a holder initially lacks title or the Governor erroneously issues the Certificate of Occupancy to a holder who is not entitled to it, the Certificate of Occupancy is subject to reversal by a court of competent jurisdiction. The holder of a certificate of occupancy always possesses a worthless document when the court vacates the certificate as erroneous, either owing to evidence of a superior title or because the holder never had the title to begin with. On this issue the Supreme Court case *Ogunleye v. Oni*²⁴, the decision of the court centred on this particular aspect. Furthermore, it is respectfully said that the courts have caused immeasurable harm by delivering erroneous dicta that lack statutory support regarding the function of a Certificate of Occupancy in accordance with section 9(1)(c) provisions. It is also worthy of note that section 9(1)(c) states “any person entitled.” This phrase was vague, imprecise, and nebulous. It has failed to categorically state those who comprise of “any person entitled.”

It is critical to address the problem and advocate for a land tenure system that is more secure and predictable to facilitate economic expansion and stability in Nigeria.

Restrictive Definition of a Holder Under Land Use Act

Nigeria's land tenure and property ownership legal framework, based on the Land Use Act (LUA) of 1978, includes a definition of a "holder" in Section 50 which has generated much dispute and discussion²⁵. This section outlines the conditions that must be completed for a person to be deemed a holder of the right of occupancy under the LUA, and it is noticeably narrow in its application. Section 50 of the Land Use Act of 1978 provides the following.

A holder in relation to a Right of Occupancy means a person entitled to a Right of Occupancy and includes any person to whom a Right of Occupancy has been validly assigned or has validly passed on the death (of a holder but does not include any person to whom a Right of Occupancy has been sold or

²⁴ (1990) 2 NWLR (Pt. 135) 745 SC; 6 NWLR (Pt. 158), 514

²⁵ O Sanni, Oluwaseyi, ‘An Appraisal of the Legal Framework Regulating Mortgage of Landed Property as Security for Loans from Banks in Nigeria’ (, 2017) <SSRN: <https://ssrn.com/abstract=3039309> > accedes 20 October 2023.

transferred without a valid assignment, nor mortgagee, sub lessee or sub under lessee)

This provision of the Act appears to exclude from the definition of holder any individual to whom a mortgage or sale of a Right of Occupancy has occurred. Section 50 of the Land Use Act of 1978 also diminishes the value of the Right of Occupancy. This provision appears to deprive a financier involved in a mortgage transaction of the guarantee that is essential when extending a loan to the mortgagor, thereby rendering the essence of land security irrelevant. Section 50 of the Land Use Act 1978 in stills mortgagees with apprehension because of the concern that mortgagors might fail to repay their loans. This concern is inherent in the provision itself. Section 30 of the Land Use Act, according to Onuoha²⁶, provides a definition that explicit and perplexing.

Cumbersome Consent Provision Under the Act

In Nigeria, an intricate framework of laws and regulations controls the acquisition, use, and transfer of property and land. Section 22 of the Land Use Act of 1978 is highly influential and is subject to significant controversy. This section of the Land Use Act establishes a structure for individuals or entities that hold Statutory Rights of Occupancy, a legally binding instrument that confers the privilege of property ownership and use. By virtue of the provisions of Section 22 of the Land Use Act, 1978,

It shall not be lawful for the holder of the Statutory Right of Occupancy granted by the Military Governor to alienate his Right of Occupancy or any part thereof by assignment, mortgage, transfer of possession, sub-lease, or otherwise howsoever without the consent of the military governor first had and obtained.

²⁶ R A Onuoha *The Law of Land and Company Securities in Nigeria Reformation and Development of Viable Alternatives* (Anon Publishers, Owerri, 2008)



As an established principle of statutory interpretation, the inclusion of the verb "shall" in the language of a statute invariably implies that its application is obligatory. Consequently, the phrase "It shall" above mandatorily requires the "first had and obtained" consent of the Governor prior to the validity of any transaction, including a mortgage transaction. The consent provision of the Land Use Act 1978 is an obligatory, laborious, expensive, and ineffectual component; in its absence, specific transactions will be deemed invalid, null, and void; thus, it represents the creditors' albatross in Nigeria.²⁷

Section 22 of the Land Use Act 1978 in Nigeria has significantly impacted the property and land tenure system, causing financial strain on landholders and requiring significant time and energy investments. Obtaining a governor's assent, often bureaucratic and costly, is a major barrier to property transactions and investment. Section 22 has also been criticised for being opaque and vulnerable to political pressure, leading to biased decisions and uneven implementation. Consequently, calls for change and greater administrative openness have emerged. The real estate industry advocates for a more simplified, effective, and fair procedure. The future of Section 22 remains a sensitive topic, with discussions on balancing land management with economic growth within the dynamic legal and regulatory system.²⁸

Dreadful Revocation Under the Act: Impeding Secured Credit Transactions in Nigeria

In Nigeria, Section 28 of the Land Use Act of 1978 frequently leaves mortgagees fearful, putting them at the mercy of a harsh system. The difficulties and distress experienced by a mortgagee who provides financial assistance to a mortgagor are readily apparent when they are the ones who lose out on the agreement. This regrettable circumstance particularly when there is a chance that the Certificate of Occupancy, which was put up as loan collateral, would be revoked.²⁹ Such a revocation would have disastrous consequences for the mortgagee. Due to the Land Use Act's seemingly strict interpretation, the mortgagee is now in a difficult situation with little protection or

²⁷ J Nwatu, *A Critical Overview of The Consent Provisions Under The Land Use Act, 1978* (2010). (Doctoral dissertation, Abia State University).

²⁸ M Nwocha, Impact of the Nigerian Land Use Act on economic development in the country. (2016) 8 *Journal of Acta University Danubius Administration*, 2, 43-56.

²⁹ D Adesanya, "A Review of the Basic Legal Requirements for Secured Credit Transactions in Nigeria." (2023) 25 *Law and World* 40.

other options in the event that the Certificate of Occupancy is withdrawn. In addition to generating concerns, this circumstance has inhibited the expansion of secured credit transactions in Nigeria.³⁰

Compensation Disparities in Nigeria

The Land Use Act of 1978, a pivotal piece of legislation shaping land tenure in Nigeria, enshrines a compensation provision in Section 29. However, this provision has raised issues regarding selectivity and discrimination. The compensation provision, as contained in Section 29 of the Land Use Act 1978, is as selective as discriminatory. The fact that no mention has been made of the position of a mortgagee to whom a holder has transferred his right, for the purpose of securing bank advances, lends poignancy to the statement above. Although the Act provides that compensation will be paid to the holder of the Right of Occupancy acquired by the State or Federal Government for public and mining purposes, it is regrettably sad that it is not in all cases that a holder of a Right of Occupancy will enjoy the largesse of compensation paid by the governor. Accordingly, revocation carried out under section 28, paragraph (a) subsection (2)³¹ and paragraph (d) of subsection (3)³² does not attract compensation from revoking authorities. Similarly, compensation is forlorn under sections 2(4)³³ and (5).³⁴ This article therefore submits that it is the selective and discriminatory nature of Sections 28 and 29 that have made the supposed growth of security in Nigeria under the Land Use Act 1978 to be nothing but a quagmire and fiasco.

Resettlement of Occupiers without Compensation

³⁰ M Eze, 'Land Use Act and Urban Housing Crisis in Nigeria' (2014). *E EST*, 39(1).

³¹ "The alienation by the occupier by assignment, mortgage, transfer of possession, sub lease or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or any regulation made hereunder"

³² The alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

³³ The Governor shall revoke a right of Occupancy in the event of the issue of a notice by or on behalf of the (Head of Federal Military Government) if such notice declares (such land to be required by the Government for public purposes)

³⁴ The Military Government may revoke a statutory right of occupancy on the ground of:

- (a) A breach of any of the provisions which a Certificate of Occupancy is by Section 10 deemed to contain
- (b) A breach of any term contained in the Certificate of Occupancy or in any special contract made under Section 8
- (c) A refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Military Governor under subsection (3) of Section 10

Regarding land tenure, ownership, and rights, Nigeria's Land Use Act of 1978 was a game changer in the country's legal system. However, Section 33 of this act has become a major obstacle to the development of security and investment in Nigeria, despite its broad scope. This section of the Land Use Act 1978 basically provides for resettlement in lieu of compensation for an occupier of any developed land on which a residential building has been erected whose Right of Occupancy has been revoked either by the Governor or the Local Government, as the case may be. The Act stipulates in section 33(3) that “where the person accepts a resettlement, his right to compensation shall be deemed to have been duly satisfied and no compensation shall be payable to such person.” This provision significantly diminishes the importance of the Right of Occupancy. An erudite scholar³⁵ postulated the following hypothesis:

In my view, the effect of these provisions diminishes the value of the Right of Occupancy as security, where it is revoked and the holder/mortgagor accepts the option of resettlement. This is because it renders the effort of the creditor to retrieve the advance improbable without the cooperation of the mortgagor to substitute the property for the revoked one.³⁶

According to Section 33(2), where the value of the alternative accommodation provided for the person whose Right of Occupancy had been revoked is higher than that revoked, the balance will be converted into a loan, which the person affected shall refund or repay to the government. Onuoha highlighted the challenging situation faced by creditors in this particular case, expressing enthusiasm. The author stated that:

the clear meaning of this provision is that where such a revoked Right of Occupancy is the subject of a mortgage transaction, the creditor may have to pay off the loan to the government before

³⁵ R A Onuoha, *The Law of Land and Company Securities in Nigeria Reformation and Development of viable Alternatives* (ANON Publishers, Owerri 2008).

³⁶ *Ibid* 126.



realising the security, especially where the mortgagor decides not to settle the difference in the value of the two Properties.³⁷

Creditors in Nigeria encounter predicaments under Section 33 of the Land Use Act 1978, whereby they might be obligated to repay government loans before obtaining security. Promoting certainty, security, and fairness in secured credit transactions underscores the necessity of legal reforms that strike a balance between the interests of creditors and property owners.

Transfer Restrictions for Non-Urban Land

One major impediment to the successful implementation of substantial expansion in Nigeria's non-urban sectors of the economy is Section 36(5) of the Land Use Act 1978.³⁸ This provision effectively prevents the realisation of capital by prohibiting any type of transfer or disposal of the Customary Rights of Occupancy. To enhance clarity, proficiency, and emphasis, section 36(5) provides the following:

Any land to which this section applies cannot be divided or developed into smaller plots, and the person holding the land as mentioned above cannot transfer it to any other individual.

However, it is essential to specify that the rule exclusively encompasses the acknowledged customary right to occupancy. Along with the provisions mentioned above in the Land Use Act of 1978, practical problems make it harder to improve security in Nigeria. These include concerns regarding land accessibility, availability, and affordability.

Conclusion

The general perception is that Nigeria's Land Use Act 1978 is yet to adequately handle land-related challenges. This is primarily due to the significant gap between the Act's intended aims and its actual achievements. Since the passage of the Land Use Act in 1978, various instances and terrible consequences of land transactions have plagued our country. Unfortunately, the presence of this

³⁷ *Ibid* 127

³⁸ E Enakireru and S Iboloko, 'The Power of the Mortgagee to Sale Vis-a-Vis Land Management in Nigeria' (2022) *International Review of Law and Jurisprudence*, 4, 142.

Act in our legal system has proven to be a burden rather than a benefit, a scourge rather than a blessing, or a disease rather than a cure. This is especially evident in its negative influence on the prospects of secured credit transactions in Nigeria.

Recommendations

The Land Use Act of 1978 in Nigeria requires thorough review and amendment to ensure alignment with the requirements of secured credit transactions. The recommended amendments aim to simplify land tenure procedures, minimise administrative red tape, and improve the efficiency of acquiring and registering land interests. Aligning legislation with other relevant laws, such as the Companies and Allied Matters Act (CAMA) and Secured Transactions in Movable Assets Act (STMAA), will establish a more unified legal structure for secured credit transactions. The implementation of digitalisation in land records and property registries will improve transparency, mitigate fraud risk, and expedite due diligence in secured credit transactions. Ensuring stakeholder engagement is crucial for considering the interests and concerns of all parties involved.

Legal practitioners, government officials, and financial institutions must prioritise the implementation of comprehensive training and awareness programmes to guarantee a comprehensive understanding of the revised legal framework. Public education initiatives will provide people and companies with the necessary knowledge to make well-informed decisions when participating in safe credit transactions.

Establishing routine surveillance and evaluation mechanisms is crucial to gauge the efficacy of the reformed legal framework and to detect emerging concerns or areas necessitating enhancement. A comparative assessment of the Nigerian legal framework pertaining to secured credit transactions in relation to global benchmarks would harmonise it with international standards and bolster its attractiveness to foreign investors. Preventing the potential conflicts or ambiguities that may emerge in secured credit transactions requires legislative consistency. To achieve sustainable implementation, it is critical to ensure that the legal framework remains current and adaptable to changes in the economic and legal landscapes. By amending the Land Use Act of



1978, these recommendations seek to make it more advantageous for secured credit transactions. This enhances Nigeria's financial stability, investment, and economic growth.