

# **An Examination of the Procedure of Compulsory Acquisition and the Instances of Acquisition without Compensation under the Land Use Act, 1978**

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## **Abstract**

The legal framework for the compulsory acquisition of land in Nigeria is primarily anchored in the 1999 Constitution (as amended), which guarantees the right of every Nigerian to own immovable property and protects against unlawful deprivation. However, this right is qualified by provisions allowing for compulsory acquisition in the public interest, provided that there is prompt compensation and unhindered access to the courts. This paper examines the statutory powers of compulsory acquisition under the *Land Use Act*, with particular reference to **Sections 44 and 51**, which empower the Governor to revoke rights of occupancy for overriding public interest while also defining the scope and interpretation of terms such as “public purpose” and “revocation.” The study identifies the persistent abuse and arbitrary use of these powers as a major legal problem often marked by inadequate or delayed compensation, lack of procedural transparency, and violations of due process rights. The aim of the study is to assess whether the current legal regime under the *Land Use Act* conforms to constitutional protections and equitable standards. The objectives include evaluating the scope of the Governor’s authority, procedural safeguards under the Act, and the actual protection available to landowners. The study is limited to statutory compulsory acquisitions and does not address private or purely customary land transactions. The significance lies in its relevance to land law reform, as it highlights the tension between state power and individual rights. Using a doctrinal method, the study relies on analysis of statutory provisions and judicial decisions. A key finding reveals that the broad discretionary powers granted under Section 44 (permits the Governor to revoke a right of occupancy for overriding public interest) are frequently exercised without adherence to procedural safeguards, undermining the spirit of Section 51’s (defines key terms like “public purpose” and “revocation” under the Act). It is recommended that legislative amendments be made to curtail executive discretion and enhance judicial oversight to better protect property rights and promote accountability.

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## **1.1 Introduction**

The procedure for compulsory acquisition of land in Nigeria is principally governed by the *Land Use Act, 1978*, which fundamentally altered the nature of landholding by vesting all land within a state (excluding land vested in the Federal Government or its agencies) in the Governor of that state to be held in trust for the use and common benefit of all Nigerians. Section 28 of the Act provides that the Governor may revoke a statutory or customary right of occupancy for overriding public interest, such as urban development, mining, or oil exploration. However, the Act mandates that where such revocation occurs, compensation must be paid in accordance with Sections 29 and 44 of the Act.<sup>1</sup>

Despite this requirement, many cases have emerged where land is acquired without due compensation or through procedural shortcuts that undermine the rights of landowners. This has sparked increasing concern among legal scholars and human rights advocates over the arbitrary

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<sup>1</sup>Owolabi, K. A. „“Land Use Act: Why Does Therapy Become Pathology?” *University of Ibadan Law Journal*, vol. 1 No. 1, Ibadan University Press, (2011) 257-282

use of state power in land matters and the growing discontent among dispossessed landowners who are denied justice and fair treatment.<sup>2</sup> The procedural requirements, including issuance of notices, consultation, and computation of compensation, are frequently overlooked, leading to legal uncertainties and social unrest.<sup>3</sup>

This paper seeks to critically examine the procedural framework for compulsory land acquisition under the *Land Use Act, 1978*, while highlighting cases and statutory provisions that have either supported or violated the legal guarantees of compensation. Emphasis will be placed on the relevant sections such as Sections 28, 29, and 44, and interpretative definitions in Section 51, as well as judicial interpretations by Nigerian courts. Furthermore, the study will explore specific instances where land has been acquired by the government or its agencies without compliance with compensation provisions, either due to ambiguous administrative interpretations, lack of political will, or systemic institutional failures. The goal is to assess whether the legal mechanisms in place sufficiently protect the constitutional rights of landowners or whether reforms are needed to address the recurring issues of injustice.<sup>4</sup>

## 1.2 The Power of Compulsory Acquisition of Property Under The 1999 Constitution

The fundamental right to own property imports a corresponding right of non-deprivation unless adequate compensation<sup>5</sup> is paid. This is guaranteed by S. 44 (1) (a) of Nigerian Constitution 1999 which provides: ...

“No movable property or an interest in an immovable property shall be taken<sup>6</sup>... compulsorily and no right over or interest in such property shall be acquired compulsorily except<sup>7</sup>... prompt payment of compensation thereof”

Strictly speaking, the prompt payment of compensation is not equivalent to adequate compensation which means the full value of the property taken compulsorily payable in money or money's worth.<sup>8</sup> It represents the market value of the property when taken including interests, costs or value to the owner for the purpose which the property was designed, so that the expropriated owner can be put in a position he would have been if the acquisition was not executed.<sup>9</sup>The Court in *National*

<sup>2</sup>Omotola, J.A. (1982). *The Land Use Act: Report of a National Workshop*. Lagos: University of Lagos Press., p. 12

<sup>3</sup>Attoe, E. (2011). “Problems of Compulsory Land Acquisition and Compensation in Nigeria.” *Journal of Sustainable Development Law and Policy*, 1(1), 84–95

<sup>4</sup> Bello, A. (2016). “Legal Framework for Compulsory Acquisition and Compensation in Nigeria: A Critical Appraisal.” *Nigerian Law Journal*, 19(2), 143–160

<sup>5</sup>*Aina & Co. Ltd v. Commissioner of Lands & Housing Oyo State* (1983) 3 FNLR 113

<sup>6</sup> Article 14 African Charter on Human & Peoples Right (Ratification and Enforcement) Act 1983.

<sup>7</sup> Under Article 17 United Nations Declaration of Human Rights 1948 there is a fundamental Human Right to own property and guarantee of payment of compensation for deprivation.

<sup>8</sup> *Shell Petroleum Development Co. Limited v. Farah* (1995) 3 NWLR (Pt. 382) 148 at 149, *Elf Petroleum (Nigeria) limited v. Umah* (2007) 1 NWLR (Pt. 1014) 44 at 47 per Abdullabi JCA.

<sup>9</sup> John Sheehan-Economic Cost of Dispossession- (2008) 9-10 Sept FIG/FAO/CNG International Seminar on State and Public Sector Land Management Verona Italy 1-5

*University Commission v Oluwo*<sup>10</sup> stated that the rights of an individual to acquire properties anywhere in Nigeria is enshrined in the constitution and it carries with it the right to dispose of such properties, thus, any individual whose land the government compulsorily acquired is entitled to prompt payment of reasonable compensation.

In *Goldmark (Nig.) Ltd. v. Ibafor Co. Ltd.*,<sup>11</sup> the Court held that there is no doubt the government has the power and authority to acquire land compulsorily for public use, however, such power is exercisable in accordance with the proper procedure for acquisition, that is, proper notice must be given to the owner of the land and reasonable compensation must be paid. Thus, from the above it is clear that the 1999 constitution has guaranteed the right to compensation as a result of compulsory acquisition of land by the government.

### **1.3 The Land Use Act and the Power of Compulsory Acquisition of Property**

Compulsory acquisition of land by the government for public purposes or overriding public interest can be in several phases as stressed by the Land Use Act 1978 such as infrastructure development, urban planning, or economic projects. Section 1 of the LUA distinguishes between urban land and rural land and devolves the right to urban land on the governor who was/is...

holding such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agricultural, commercial and other purposes while similar power with respect to non-urban areas are conferred on Local Governments.<sup>12</sup>

This allows the governor and local government Chairmen to devolve the land for use without the problems of multiple negotiations over the same land.<sup>13</sup> The Act infers a legal claim against all other rights to land not given under the Act.<sup>14</sup> The definition of ‘overriding public interest’ in the case of the local government and customary right in the rural area is under 28 (3) which provide;

Overriding public interest in the case of a customary right of occupancy means- (a) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

‘Public interest /purpose’ is basically interpreted as uses for development purposes. Thus, it is an important and generally relevant benefit, which the government perceives as an imperative. It covers acquisition of land for roads, provision of public services as well as government facilities. It should however be noted here that not all land needed by a public authority is subject to compulsory acquisition.<sup>15</sup>

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<sup>10</sup> [2001] 3 NWLR (Pt. 699) 90 at 105,

<sup>11</sup> [2012]10 NWLR(Pt 1308),

<sup>12</sup> Preamble to the Land Use Act

<sup>13</sup> See generally, *Salami v Oke* (1987) 9-11 SC 43 and *Abioye v Yakubu* (1991) 5 NWLR pt 190 at 130.

<sup>14</sup> Sections 9, 14 and 29 LUA.

<sup>15</sup> *Ibid*

## 1.4 Purposes for Which Property may be Compulsory Acquired

Property may be compulsorily acquired for public purposes such as urban development, infrastructure projects, education, health facilities, mining, oil exploration, and other uses deemed to serve overriding public interest.

### 1.4.1 Projects which Sufficed for Public Purposes

Courts have reviewed and scrutinized the definition of the public purposes and have adjudged various projects implemented pursuant to public land acquisition laws as satisfying these requirements. Generally, the acquisition for housing developments, even though private individuals were granted leases of 99 years duration sufficed for the public purpose.<sup>16</sup> The acquisition of land and its sub-division into long leases of 99 years to ensure economic viability of agricultural lands has been held to constitute a public purpose.<sup>17</sup>

The acquisition of the property of a private company to house the National Airlines and of swampy delta areas developed into a seaport complex<sup>18</sup> acquired for the use of the Federal Government of Nigeria all sufficed for public purposes. Similarly, in *New Munyu Sisal Estate Limited v. Attorney General*<sup>19</sup> the acquiring authority proved that the acquisition of the sisal estate was for public utility, public benefit such as the settlement of squatters.

### 1.4.2 Projects Which Did Not Qualify for Public Purpose

Projects that do not qualify as public purpose include acquisitions for private commercial ventures, political favoritism, personal enrichment, or transfers to private individuals lacking direct benefit to the wider public.

In *Bello v. Diocesan Synod of Lagos*<sup>20</sup> private land was acquired for the purpose of extending the church. The Supreme Court held it was not for public purposes because the facilities of the church are not available to people other than its members and the properties of the church are privately owned by the parochial committee.

In *Akinyemi v. Governor Oyo State of Nigeria*<sup>21</sup> it was held that allocation of lands for mixed projects and praying grounds sufficed for social services within the ambit of public purposes. Outside Africa the separation of church and State has become the norm. In Nigeria however, even though a secular State there is freedom of religion and all religious organisations have freedom to acquire lands to erect places of worship which fall within the ambit of charitable purposes/social services allowable by the public land acquisition laws. What is more, the monetary deposit made

<sup>16</sup> Section 6(3) (4) Federal Capital Territory Act 1976 (Federation of Nigeria) where lands were acquired to develop FCT Abuja and vested it in Federal Capital Territory Development Authority (FCDA) for public purposes.

<sup>17</sup> *Theron v. Tegethoff* (2001) NR 203 per Merits J.

<sup>18</sup> *Oilfield & Supply Centre Ltd v. Johnson* (1987) 5 SC 310

<sup>19</sup> (1972) EALR 88 at 90 – 91 (Kenya HC).

<sup>20</sup> (1973) 3 SC 108 at 138 (1973) 3 ECSLR 330 (1973) 1 ALL NLR 24 at 268.

<sup>21</sup> (2001) OYSHC 67 at 89.

by the church in *Bello v. Diocesan Synod of Lagos*<sup>22</sup> is not unlawful as Lagos Executive Development Board (LEDB) is entitled to charge administrative costs, expenses and can also alienate its lands acquired for the purpose of its objective such as housing, economic and industrial development.<sup>22</sup>

### **1.5 Procedure for Compulsory Acquisition of Property**

Compulsory acquisition is a power of government, but it is also the process by which that power is exercised. Attention to the procedures of compulsory acquisition is critical if a government's exercise of this power is to be efficient, fair and legitimate. In line with the FAO studies in Land tenure, a well designed compulsory acquisition process should include the following steps:

- i Planning
- ii Identification of location and land size
- iii Data collection
- iv Impact assessment with affected people
- v Publication of notice of intended acquisition
- vi Submission of compensation claims
- vii Detailed description of purpose, process, deadlines, and rights
- viii Conduct of public meetings for information and feedback

The Act also provides for novel procedural steps to be taken by the state to affect the revocation of right of occupancy under it. By the provision of section 28(6) of the Act, the revocation of the right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder. Thereafter the title of the holder of the right of occupancy shall be extinguished on receipt of the notice and or on the effective date stated therein.<sup>23</sup> The expected notice under this provision is expected to be served personally or by prepaid postage and or pasting on the affected premises in deserving cases.<sup>24</sup>

Sequel to the preceding procedure the Governor is expected to pay compensation in line with the provisions of section 29 of the Act. Principally, compensation is premised on payment for any unexhausted improvement on the land, return of the current rent paid for the year, and in the case of building or installation, the replacement cost less depreciation and collateral advantages. The valuation is done exclusively by the appointed state official and or government appointee. As an alternative to monetary compensation the Act provides for resettlement of displaced holders of right of occupancy in alternative accommodation. The provisions of the Act on land acquisition and its implementation conceptually breeds inequity, discord and vagaries in land administration in Nigeria.

### **1.6 Reliefs for Illegal Acquisition of Property**

When land is compulsorily acquired, landowners may feel aggrieved and seek remedies. Here are some remedies available to landowners in Nigeria:

- i. **Challenge the acquisition:** Landowners have the right to challenge the legality or necessity of the acquisition. They can file a lawsuit to challenge the acquisition if they believe that due

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<sup>22</sup> Ibid

<sup>23</sup> Section 28(7) Land Use Act

<sup>24</sup> Ibid section 44

- process was not followed or that the acquisition is not for a genuine public purpose. In exploring this remedy, legal representation is advisable in such cases.
- ii. **Negotiation and alternative arrangements:** Landowners can negotiate with the government for alternative land or suitable compensation packages. This could involve exchanging the acquired land for an equivalent parcel in a different location or receiving compensation in the form of alternative land or other benefits. Negotiation is often a preferred approach to resolve disputes amicably.<sup>25</sup>
  - iii. **Judicial review:** Landowners can seek judicial review of the acquisition process to determine whether the government followed the proper legal procedures. Judicial review can scrutinize the decision-making process, including assessing whether the acquisition was in the public interest and whether the compensation offered is reasonable.
  - iv. **Mediation and arbitration:** Landowners can explore alternative dispute resolution mechanisms such as mediation or arbitration to resolve disputes with the government. These processes can provide a forum for open dialogue and negotiation to reach a mutually acceptable resolution.
  - v. **Consultation and participation:** Landowners have the right to be consulted and participate in the decision-making process concerning the acquisition of their land. The government is expected to engage with affected landowners and provide information about the project. Landowners can assert their rights to be involved in the process and raise concerns or propose alternatives.

### 1.7 The Quantum of Compensation

It is the prerogative of the courts to determine the quantum of compensation it deems adequate. It behoves on the judge to make the necessary adjustments to what was offered by the acquiring authorities and what is claimed by the landowners. The courts are assisted by assessors who constitute the expert witnesses but they have an obligation to furnish satisfactory reasons for their assessments. The probative value of the valuation reports has to be logical, coherent, reasonable and convincing. The determination is made with the assistance of expert opinion but in considering it, the attitude of the court is not to give too much weight to the report unless it is supported by other evidence.<sup>26</sup>

In *Samuel Ononuju & anor v. Attorney General, Anambra State & ors.*,<sup>27</sup> an expanse of land was compulsorily acquired for the Federal Government use but was subsequently granted to the 3rd respondent a private individual converted its use into private purpose. It was the contention of the appellants that “the 3rd respondent to whom the grant of the land was made never used it for public purpose within the definition of section 50 of the Land Use Act, rather he built flats on it part of which he let to bank workers, lecturers in nearby university and some private individuals from which he collected rents” the Court held per Aderemi J.S.C., that “...no one including the

<sup>25</sup>Ibid

<sup>26</sup>Aluko B.T & Amidu A. R: Women and Land Rights Reforms in Nigeria. Promoting Land Administration and Good Governance 5th FIG Regional Conference Accra, Ghana, March 8-11, 2006 available at: [http://www.fig.net/pub/accra/papers/ts09/ts09\\_04\\_aluko\\_amidu.pdf](http://www.fig.net/pub/accra/papers/ts09/ts09_04_aluko_amidu.pdf) accessed 04/06/2013

<sup>27</sup>(2009) LCN/3671(SC)

government, can deprive a holder or occupier of a parcel of land unless the land is acquired compulsorily in accordance with the provisions of the Land Use Act e.g. for overriding public interest or for public purpose by the Local Government or State Government.”

### **1.8 Instances of Compulsory Acquisition without Compensation as Found under the Act**

The Act under certain circumstances confers power to revoke or compulsorily acquire land and land rights without compensation.<sup>28</sup> Each of the instances is treated seriatim.

- A. Revocation on grounds of alienation without requisite consent:** The Act prohibits<sup>29</sup> and make it unlawful for any person granted a right of occupancy by the Governor to alienate his right of occupancy or any part thereof without the consent of the Governor first had and obtained. Any purported transfer of possession without the requisite consent is null and void.<sup>30</sup> In addition the holder of the right stands to forfeit his right by outright revocation without any compensation. In *Savannah Bank v. Ajilo*,<sup>31</sup> the court extended the application of the foregoing provisions to include a deemed grant of a right of occupancy.<sup>32</sup>
- B. Revocation on grounds of breach of the provisions contained in the right of occupancy:** By virtue of section 28(5) (a) of the Act, the Governor may revoke a statutory right of occupancy if there is a breach of the provisions which by virtue of section 10 of the Act, the certificate is deemed to contain.<sup>33</sup> Section 10 provides as follows:“Every certificate of occupancy shall be deemed to contain provisions to the following effect:-
- a) that the holder binds himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;
  - b) that the holder binds himself to pay to the Governor the rent fixed by the Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16 of this Act.”

Accordingly, where the holder fails to pay any amount required of him to be paid for any unexhausted improvements on the land at the date of his entering into occupation or fails to pay the fixed or revised rent on the land covered by the certificate, the holder stands the risks of revocation without compensation.<sup>34</sup>

- C. Revocation on grounds of breach of the terms of the certificate of occupancy or special contract made under the Act:** Another instance of expropriation without compensation under the Act is where there is a breach of any of the terms contained in the certificate of occupancy or in any special contract made by the Governor and the holder of the certificate, as long as the terms are not inconsistent with the provisions of the Act.<sup>35</sup> Accordingly where the holder of a certificate of occupancy fails to comply with the terms of the grant or commits a breach of

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<sup>28</sup> Section 28(5) (c) of the Act.

<sup>29</sup>Section 22 of the Land Use Act, 1978

<sup>30</sup>Section 22 (2). Ibid

<sup>31</sup> (1989) 1 NWLR(Pt. 97) p. 305

<sup>32</sup>Umuezilike op cit. p. 91

<sup>33</sup>Ibid

<sup>34</sup>Ibid

<sup>35</sup> Section 28 (5) (b) of the Act.

its terms or the terms of a special contract entered into by him and the Governor regarding the land, he stands the risk of revocation of his rights without any right to be compensated.<sup>36</sup>

**D. Revocation on grounds of refusal or neglect to accept and pay for a certificate issued in evidence of a right of occupancy:** The Governor may also compulsorily acquire or expropriate land without the payment of compensation where the holder refuses or neglects to accept and pay for a certificate which was issued in evidence of a right of occupancy. Section 9 (3) provides as follows:

“If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses or neglects to accept and pay for the certificate, the Governor may cancel the certificate and recover from such person any expenses incidental thereto, and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (a) of subsection (1) the Governor may revoke the statutory right of occupancy.”

Thus where the Governor after confirming the existence of a right of occupancy of a holder proceeds to issue a certificate evidencing that right, the Act provides that if the holder of the said right of occupancy fails to accept and pay for the certificate issued in respect of that right, such a holder will not only lose his right by revocation at the instance of the Governor but will also not be entitled to be compensated for the revoked right.<sup>37</sup>

## 1.9 Conclusion

In conclusion, the procedure of compulsory acquisition under the *Land Use Act, 1978* was designed to balance the state's developmental objectives with the protection of individual property rights. However, in practice, this balance is often disrupted by procedural lapses, lack of transparency, and frequent instances of acquisition without adequate or any compensation. These shortcomings not only violate constitutional guarantees but also fuel social discontent and weaken public trust in government institutions. While the Act outlines clear steps including notice, public engagement, and compensation their inconsistent implementation has led to widespread abuses. Therefore, there is an urgent need for legal and institutional reforms that will enforce compliance with due process, ensure prompt and fair compensation, and strengthen judicial oversight to uphold the rights of landowners in line with constitutional and international standards.

From the above, the paper made the following observation were made:

1. It is observed that there is no uniform legislation in Nigeria that burdens on compulsory acquisition of land in the country. Hence, the conflicting court decision in different circumstance right from revocation process, pre-revocation notice and payment of compensation. Thus, in some instances, due to lack of uniform law, payment for unexhausted

<sup>36</sup>Owolabi, K. A. ,“Land Use Act: Why Does Therapy Become Pathology?” *University of Ibadan Law Journal*, vol. 1 No. 1, Ibadan University Press, (2011) 257-282

<sup>37</sup> Section 28(5)c Land Use Act

improvement were granted on the land while in other payment for compensation were not granted as seen in some cases considered above.

2. Furthermore, it is observed that, currently on the issues of assessment of compensation, the law consider most at times the principle of replacement without recognizing the current market value of the land intended to be revoked. Hence, the land owners are deprived the value of the improvement on such lands. In some situations it is observed that, disparity in the payment of compensation due to closeness or relationship with the assigned officers constitute a major problem some are been paid lesser amount even when they deserved to be paid the same or even more. This challenge often destroys land owners confidence whenever government want to take over land for public purpose as provided under section 51, section 44 of the Land Use Act.

From the above findings, the paper made the following recommendations are made:

1. There is the need for uniform and comprehensive legislation in Nigeria that addresses all segments of compulsory acquisition issues and provides uniform compensation regime to the affected. The new law should address uniform revocation process by adopting and adapting the decision of courts in a legislative context and providing for pre-revocation notice, pre-revocation inspection, provision for claims and objection to proposed revocation, notice of revocation and payment of compensation. It should also abolish penal revocation as it is derogation from the constitutional provision on property right since the right to compensation is a constitutional right.
2. It is recommended that the Land Use Act should be amended to address the issue of assessment of compensation. The law should move away from the assessment principle of replacement cost less depreciation to assessment based on investment principle. The latter principle is more attuned to equitable and fair compensation scheme than the former which tended to deprive the land holder the current replacement value of the improvement. Also, sentiment on the part of those responsible to pay compensation should be address. Any officer(s) found guilty of deliberately given wrong compensation on similar or exact land due to relationship or influence should be arrest and face the law.

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