

COMPULSORY LAND ACQUISITION POWER OF GOVERNMENT AND ITS ABUSE IN NIGERIA

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Abstract

This paper explores the compulsory land acquisition power of the government and its abuse in Nigeria. The article notes that land has become essential for investments like building of highways, railroads, harbors, and airports, as well as hospitals, schools and infrastructure for sewage, water and electricity. The paper further states that, compulsory acquisition is a critical development tool for governments and for ensuring that land is available when needed for infrastructure. The paper investigates the compulsory land acquisition power of the government and its abuse in Nigeria. The paper reveals that government has the power to compulsorily acquire land or property for public purposes and that there is laid down procedure for land acquisition processes for which there are strict effects for non-adherence and/or compliance thereto. The paper adopted the doctrinal research method. It recommends that the Land Use Act, of 1978 should be amended to ensure that it provides adequate protection for landowners' rights. The article concludes that, there is abuse of the acquisition power of government in some cases where notices of acquisition of land were not issued to landowners and compensation not being paid to some landowners.

Keywords: Acquisition Power, Compulsory Land Acquisition, Compensation, Nigeria, Government

Introduction

In various jurisdictions, the terms "compulsory acquisition," "compulsory purchase," "force acquisition," "force," "eminent domain," "resumption," "taking," and "revocation" are used interchangeably to refer to the government's compulsory acquisition power of taking private land from landowners for public use or interest in exchange for payment of compensation.¹ The ability of the government to obtain private property rights in land without the owner's or occupier's consent in order to benefit society as a whole is known as compulsory acquisition. All modern governments are obsessed with power in one way or another. For social and economic progress as well as the preservation of the environment, this power is essential. Land has become essential for investments like building highways, railroads, harbors, and airports, as well as hospitals, schools, and infrastructure for sewage, water, and electricity; as well as for the prevention of flooding, the defence of waterways, and the defence of environmentally sensitive areas.²

Compulsory acquisition is a critical development tool for governments and for ensuring that land is available when needed for infrastructure. Thus, Otuturu and Abdullahi,³ posited that the rationale for the government compulsory acquisition of land in Nigeria is the need to overcome the inherent socio-economic inhibitions in the land market as a result of a land holding system in the country. Where the land in question is family land, for example, there would be unnecessary delay in conveying a series of family meetings to obtain the required consent for a valid alienation of any interest therein. Also, since land is a social security of the last resort, most families will not be willing to make their lands available to the state in sufficient quantities for development purposes. The authors further argued that compulsory acquisition is needed to prevent private selfishness from impeding the development process. Since the purpose for which compulsory acquisition powers can legitimately be exercised is a public one, it is presumed that the social cost of taking the land may quite outweigh the private benefit of keeping ownership. Considering all these, the State resorts to compulsory acquisition of land for development purposes. However, there are insinuations that there is abuse of the compulsory land acquisition power. On account of this, the study investigates the compulsory land acquisition power of the government and its abuse in Nigeria.

The Sources of Governor's Power on Compulsory Acquisition of Land in Nigeria

The term "sources of compulsory acquisition power" refers to the legal provisions and sources of authority that enable the government to acquire land for public purposes. In other words, the ability of the government to compel the acquisition of any land or property for the benefit of the public as required by the law. In Nigeria, compulsory land acquisition started in colonial times. During the colonial era, the special Act enabling a specific acquisition contained compulsory powers. The following are some of the statutes that authorize government power to compulsorily acquire land for the benefit of the public:

i. **The Town Improvement Ordinance of 1863.** This Ordinance gave the Governor authority to acquire any land and other structures compulsorily and pay compensation. This was intended to improve Lagos by giving it spacious streets and highways.

ii. **The Lands Ordinance of 1876.** This is another Ordinance that gave the Colonial Secretary permission to compel the acquisition of any land in Lagos needed for colonial purposes. It was one of the first laws or sources of compulsory acquisition power in Nigeria. As a result, this Act gave the colonial master the right to compulsorily acquire any land in Lagos for public good or service in exchange for payment of compensation. The Southern Protectorate and Lagos amalgamation in 1906, led to the extension of the Ordinance to the entire region of Southern Nigeria.

iii. **Public Land Acquisition Ordinance of 1917.** This is another Ordinance that gave government the power to acquire land forcefully for the benefits of the public. This took the role of the Land Ordinance in 1917. Land purchase for public use or purposes was permitted by the Ordinance.⁴

iv. **The Public Lands Acquisition Act 1976.** The Public Lands (Miscellaneous) Acquisition Act 1976 is the amended version of the Public Lands Acquisition Ordinance (No. of 1876). The Act made provisions for the compulsory acquisition of estate in fee simple or for a term of years by the government in respect of lands that were required for public purposes subject to the payment of compensation. It further required that any person seized, possessed of or entitled to such land or interest therein to sell and convey it to the government, notwithstanding any disabilities or limitations on his interest.

v. **The Land Use Act of 1978.** This Act served as Nigeria's only legal basis for the power of forced acquisition. This Public Land Acquisition Act remained the key statute allowing the

government, governmental agencies, and statutory corporations to acquire land by forced means until 1978. Land that has been lawfully acquired under the Land Use Act is administered under the State Land Act and is referred to as "State land".

vi. **The 1999 Constitution of the Federal Republic of Nigeria, as amended.** This is another significant source of compulsory land acquisition in Nigeria. The 1999 Constitution, as amended, stipulates in Section 43 that:

Every Nigerian citizen has the right to purchase and own immovable property anywhere in Nigeria, subject to the restrictions of this constitution.

The government may, however, compulsorily purchase any land in Nigeria with the payment of adequate compensation under section 44(1), which derogates from the aforementioned right or provision. The clause read as follows:

No moveable property, interest in immovable property, or right over or interest in any such property may be acquired compulsorily in any part of Nigeria, except as provided by and for the purposes specified by a law that, among other things, prohibits such acquisition-

- (a) Demands timely payment of compensation; consequently, and
- (b) Gives anybody requesting such compensation the right of access to a court, tribunal, or other authority with jurisdiction in that region of Nigeria to have his stake in the property and the amount of compensation determined.

In a nutshell, the Land Use Act of 1978 and the Nigerian 1999 Constitution as amended are the sources of the Governor's power on compulsory acquisition of land in Nigeria today.

Compulsory Acquisition Powers Limitation

The Land Use Act of 1978 and the Constitution of the Federal Republic of Nigeria 1999 as amended clearly gave the government power to compulsorily acquire any land or property for public purposes. In exercising this power, there are some limitations or restrictions that are provided by the law. Some of the limitations include:

A. Statutory limitation:

1. Section 44(1) of the 1999 Constitution as amended provides as follows:

No moveable property, interest in an immovable property, or right over or interest in any such property may be acquired compulsorily in any part of Nigeria, except as provided by and for the purposes outlined in a law that, among other things, prohibits such acquisition

2. Consequently demands immediate payment of compensation, and
3. Gives anybody requesting such compensation the right of access to a court, tribunal, or other authority with jurisdiction in that region of Nigeria to have his stake in the property and the amount of compensation determined.⁵ In other words, for acquisition to be valid, the landowner must be compensated.

Land or property that the government of Nigeria compulsorily acquires must be compensated. Meaning that receiving pay is a legal requirement, not a perk of forcible acquisition.

B. Land Use Act: Section 29 of the Land Use Act states that the holder or occupier of a right of occupancy should be entitled to compensation equal to the worth of the property as of the date of the revocation plus any unexhausted improvements. The option to accept resettlement in exchange for such revocation may also be used by the holder. This provision also limited the government to pay compensation for land or properties compulsorily acquired by the government.

C. The African Charter on Human and Peoples' Rights: The African Charter on Human and Peoples' Rights also acknowledges the value of compensation⁶ which states thus:

Property rights must be protected. It may only be infringed upon in the cause of the public good, the general good of the community, or in the interest of the public good, as determined by the provisions of applicable laws.

Similarly, Article 21 states thus:

1. All peoples are allowed to use their riches and natural resources as they like. This right must only be used for the benefit of the populace. It must never be denied to a people.
2. The displaced people have the right to the legal recovery of their property in cases of spoliation, as well as to fair recompense.

D. The American Convention on Human Rights: Lending its voice, the American Convention on Human Rights ⁷ taken at the Inter-American Specialized Conference on Human Rights in San Jose, Costa Rica, also accepted the concepts of compensation for real estate that the government has been forced to seize for the benefit of the general public. The clause read as follows:

1. Everyone is entitled to utilize and enjoy their property. The law may prioritize the interests of society over such usage and enjoyment.
2. No one's property may be taken from them unless just recompense is paid, such as in circumstances of public need or social interest, and only in the ways and under the conditions specified by law.

E. Case law/Judicial precedent: The judiciary is the last hope of the common man. There are several cases that limit the compulsory acquisition power of governors where the court declared the acquisition process of government null and void. For example, in the case of the *Administrators/Executors of the Estate of General Sani Abacha (Deceased) v. Samuel David Eke-Spiff & 3 Ors.*,⁸ the Supreme Court ruled that any property or land obtained by the government through coercion without receiving payment for it rendered the purchase void. Furthermore, in *Osho v. Foreign Finance Corporation*,⁹ the Supreme Court ruled that two conditions must always be met before the Governor can revoke someone's right to occupy land for public purposes: the victim's right to a fair hearing and the victim's right to receive reasonable compensation.

In *Osho v. Foreign Finance Corp.*,¹⁰ the notice of revocation was deemed illegal by the Supreme Court due to improper service on the plaintiff. In the case of *NITEL v. Ogunbiyi*,¹¹ a revocation notification that was not personally delivered to the property owner at the address that the government was aware of, was declared invalid by the Court of Appeal. According to the case's circumstances, the Kwara State Government allegedly acquired the Respondent's sizable parcel of land next to the General Post Office through the issuance of a notice for the purpose of constructing a telephone exchange building for the Appellant. The Appellant admitted that the Respondent lived in Lagos at all relevant times and had four constructions on the aforementioned land. The respondent was not served with the notice of compulsory acquisition in Lagos, where he lived; instead, it was served on the structure. The respondent then filed a lawsuit contesting the legality of the aforementioned acquisition, alleging that the revocation was illegal and the acquisition was invalid because the notice was not personally served. The Respondent's argument that the right had not been properly canceled in accordance with Section 28(6) was upheld by the Court of Appeal.

It has been decided that serving notices in ways that are not permitted by the Act amounts to breaking the law. In *Nigeria Engineering Work Ltd. v. Denap Ltd.*,¹² it was decided that a notice of revocation that was published in the Observer Daily newspaper was invalid and had no legal impact. In *Jegede v. Citicon Nigeria Ltd.*¹³ it was held by the court that, a revocation

that was issued in an official gazette did not adhere to the Act. Serving holders or occupiers personally as required by the Act is still necessary, even though the government may choose to draw public attention to its activities by publishing acquisition information in a gazette. In *Akere v. Governor Oyo State* the Supreme Court in interpreting Section 6 of the Public Land Acquisition (Miscellaneous Provisions) No.33, 1976, held that:

Where an estate or interests compulsorily acquired is required to yield up possessions of his estate or interest in land prior to the payment of compensation or provision of alternative accommodation as the case may be, the interest of the bank rate shall be payable on the value of the estate or interest acquired (as determined pursuant to the Decree) for the period between the entry of the land and the payment of compensation....At the acquisition of their land by the Respondents, the appellants yielded possession without alternative accommodation provided for them. In my view, they are entitled to compensation as stipulated in Section 6 of the Act.

Under the Decree, Compensation payable to a person who has been dispossessed of his interest in land includes interest at the bank rate at the time of the payment thereof. The Act envisages that prompt and immediate payment should be made where land is requisitioned or acquired for public interest. However, where compensation is not immediately paid, the interest shall be paid on the delayed payment calculated on the basis of the current bank rate or at least it will be calculated on the basis of the Central Bank of Nigeria (CBN) rate from the date of requisition or acquisition to the date of payment. The doctrines of prescription rarely apply under these circumstances because demand for compensation has been universally treated under fundamental human rights to which derogation is never allowed. Although Section 4(2) provides inter alia that interest on delayed payment shall not exceed a maximum period of 10 years in universal practice and conventions in international law, the right to own property is covered under the UN Declaration of Human Rights 1984. Where the delay in payment is not assignable to the owner of the property, then interest on delayed payment shall be assigned to the owner in full.¹⁴

F. Compliance with Due Process and Procedure: Another limitation is that compulsory acquisition must comply with due process and procedures. There are laid down statutory procedures for the compulsory acquisition of property or land by the government in Nigeria. Where they are not strictly followed, it renders the acquisition a nullity. In other words, in the compulsory acquisition process there are guiding statutory procedures which must be strictly followed by the government and failure to adhere to these guidelines renders the entire process a nullity. Such statutory procedures include; proper notice of acquisition /revocation, in the notification of acquisition, the purpose of the acquisition must be expressly stated or demonstrated, compensation must be paid, and the revocation must be by the Governor or his delegate, among others. The Supreme Court reiterated this fact of compliance with laid down procedure in the case of *Goldmark Nigeria Ltd. & Ors. v. Ibafon Company Ltd. & Ors.*,¹⁵ where the Supreme Court per Peter-Odili JSC held that:

One cannot help but reiterate that, in cases where a statute expressly stipulates a specific method by which the Government or any party may acquire title, the Government or the party may only do so by strictly adhering to the statute, unless the statute or its wording is in violation of the Land's constitution. The issue of delivering notice to land owners or interested parties in the forcible acquisition of land in accordance with the aforementioned law's provisions should be strictly adhered to, to put it another way.

The Supreme Court in the above case, highlighted the requirement that the government should carefully adhere to the established processes for the seizure of land by force in Nigeria.

G. Public Purpose Limitation: Land can only be compulsorily acquired for public purposes such as for the construction of roads, schools, hospitals, and other public infrastructure projects. It cannot be acquired for purely private or commercial purposes. The court has declared several acquisition null and void on this ground

H. Payment of Adequate Compensation: The government is expected to pay adequate compensation to the land owners for land that is compulsorily acquired for the value of the land and improvement on the land. This also serves as a limitation in that failure to pay adequate compensation makes the acquisition process to be null and void.

Consultation and Consent: In some cases, especially where the land is communally owned or of cultural significance, the government may be required to consult with and obtain the consent of the affected community or landowners before acquiring the land, shrine, or burial ground among others.

Procedure for Valid Compulsory Acquisition of Land in Nigeria

The Federal Republic of Nigeria's Constitution of 1999 as amended and the Land Use Act gave the governor the power to compel the acquisition of any land and to remove any statutory right of occupation in the public interest.¹⁶ In exercising this constitutional power, the Governor must follow the laid down procedures for such acquisition to be valid, as failure to follow these procedures would be detrimental to the acquisition. Chasmia¹⁷ identified three procedures that must be followed for compulsory land acquisition to be valid. They are notice of revocation, disclosure of the acquisition's purpose, and payment of compensation discussed as follows.

a. Notice of Revocation

The Notice of Acquisition under the Nigeria Land Use Act 1978 is a legal mechanism that allows the government to acquire land for overriding public purposes. This Act was established to regulate land ownership and land use in Nigeria. When the government intends to acquire land for various purposes such as infrastructural development, public projects, or for overriding public interest, it must follow certain procedures, and the Notice of Acquisition is a crucial part of this process. There cannot be a valid compulsory acquisition of land without a "Notice of Revocation" to the holder of the right of occupancy. Notice must be given to the landowner. The landowner should be informed that his property is going to be compulsorily purchased. The Land Use Act specifies the nature of the notice to be issued, the method of delivery, and the possibility of serving the holder directly. It can also be served on the person who may be found in the land or placed in any conspicuous part of the premises. A registered address of the owner of the right of occupancy may also be used to publish the notice of revocation. All these are to ensure that the landowner gets information concerning the acquisition and they are part of the acquisition process which must not be ignored.

Where there was no notice of acquisition or where it was not served, the acquisition will be invalid and the acquiring authority would be liable to damages and such acquisition can be set aside by a court of competent jurisdiction. In *Ononuju v. A.G. Anambra State & Ors.* (*supra*), due to the Supreme Court's ruling that the purchase was illegal, the landowner was never properly served with a notice of acquisition. Furthermore, in *Nigeria Engineering Works Ltd. v. Denap Ltd.* (*supra*), The first respondent property did not receive notice of the revocation of its certificate of occupancy. The trial court declared the revocation to be unlawful. The verdict of the trial court was later upheld by the Supreme Court and the Court of Appeal. Again, in *Att. Gen. Bendel v. Aideyan* (*supra*), the then government of Bendel State forcefully acquired a land that was subject to a long lease. Before it did this, the lease

was transferred to the 1st Respondent after consent was obtained. 1st Respondent even erected a story building on part of the land. The government without serving any notice of acquisition gazette same. The acquisition was quickly declared to be invalid by the trial court. The trial court's decision was upheld by the Court of Appeal following the Appellant's appeal. The Supreme Court later found that the acquisition was unlawful upon further appeal.

Furthermore, section 44 of the Land Use Act requires that the notice must be served on the holder of the right of occupancy by:

- (a) delivering it to the person on whom it is to be served or
- (b) leaving it at the usual or last known place of abode of that person or
- (c) sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at the office.
- (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates and by delivering it to some persons on the premises or if there is no person on the premises to whom it can be delivered by effecting it or a copy of it to some conspicuous part of the premises.

In *Administrators/Executors of the Estate of General Sani Abacha (deceased) v. Samuel David Eke – Spiff & Ors*¹⁸ the Supreme Court held that it is not only unconscionable to take away a piece of land already allocated and relocate same to someone else without serving a notice of revocation on the earlier allottee. It is also unlawful and unquestionably/unlawful to do so. In *Nigerian Engineering Works Ltd v. Denap Ltd.*¹⁹ the Supreme Court similarly held that the powers of the Governor to revoke any right of occupancy must be exercised in the overriding interest of the public and more importantly the holder of the right of occupancy being revoked must be notified in advance of the revocation. Furthermore, the notice must state the reasons for the revocation and will allow the holder to make any representation he or she wishes to make. Where the notice is not given or it is inadequate or not in compliance with the provisions of section 28 of the Act, the revocation will be null and void.

Section 44(e) requires that any notice required by the Land Use Act 1978 to be served on any person should be addressed to the "holder" or "occupier" of the premises to which it relates. In *Ononuju v. A. G. Anambra State*²⁰ the Supreme Court emphasized that where a notice of revocation does not bear the word "holder" or "occupier", it is non-compliant with Section 44 of the Land Use Act and it invalidates the notice of revocation of the Appellant's land and renders it null and void. The revocation notice should be signified under the hand of a public officer duly authorized on that behalf by the Governor and the notice of it shall be given to the holder.²¹

In addition, the Acquisition's Purpose must be mentioned or stated. To enable the landowner to understand why his land is being taken, the acquisition's objective must be made clear from the outset. Land could be purchased for a variety of public uses. Land could be acquired for agricultural purposes like extensive agriculture and farm settlement. It could be for industrial purposes like the manufacturing of oil tools and the conversion of raw rubber to finished products. Also, it could be acquired to build hospitals, universities, railway tracks, railway stations, markets, stadiums, airports, seaports, extraction of oil and mining, and city

redevelopment. All the above-mentioned items are for public use. Additionally, the notification of acquisition must include a copy of its contents.

Contents of Notice of Revocation

Amokaye²² opined that the notice of revocation must include the following information:

- (i) **The purpose(s) for which the land must be declared:**
The notice should fully inform the landowner that it will be seized for the allowed reasons, but it is not necessary to go into specifics about why the land is being taken. However, the Court will deem a notification defective if it contains a purpose that is incongruous with the actual reason the land was purchased.
- (ii) **Description of Land:**
A notice of revocation must state precisely the location and amount of land to be taken by the acquiring authority. No particular form is necessary as long as the land description is clear.
- (iii) **Minerals and mining:**
If the land is intended to be used to extract minerals or mining purposes this intention should be specifically stated in the revocation notice.
- (iv) **Stamping:**
The revocation notice is not a contract between the acquiring authority and the landowner and therefore is not required to be officially stamped or sealed either when served or on production in action for specific performance. But if it is tendered in evidence, it must be duly certified as a public document.
- (v) **Signature on the Notice of Revocation:**
Periodically, it is debated whether the Governor or a public official properly appointed by him has the right to issue and sign a notice of revocation or forcible acquisition, due to the complicated language of Sections 28(6) and 45(1) of the Land Use Act. It seems that different authors have different opinions on the matter. Fekumo²³ argues that for two reasons, the Governor lacks the authority to personally authorize the termination of an occupancy right under Section 28(6).

The Notice of Revocation implies that when the Notice of Acquisition serves as a formal announcement by the government of its intention to acquire a particular parcel of land, it is a legal requirement to inform the landowner and the public about the intended acquisition. The Notice typically includes details about the land, the purpose of acquisition, and relevant legal provisions. It should be published in the Official Gazette, and local newspapers, and posted conspicuously on the land itself. Landowners are entitled to compensation for their land, which should be fair and just. The Land Use Act specifies the principles for determining compensation, taking into account factors like the value of the land, improvements on the land, and disturbance to the landowner. When a Notice of Acquisition is issued, landowners may be compelled to give up their land for the stated public purpose. This can have significant implications, especially if the land is their primary source of livelihood. Landowners have the right to challenge the acquisition in court if they believe the process was not followed correctly, or if they dispute the compensation offered.

The landowner has allodia power. He can sell the land to any person without hindrance whatsoever. He retained his authority as a beneficial owner despite the Land Use Act. The landowner may also use his property as collateral for loans from financial institutions. Where therefore the state expropriates his land for public purposes, he must be compensated. The

reason is that he has peculiarly suffered for the overall benefit of the public. To assuage his feelings or loss, the state must pay him compensation. He should not be made to bear the brunt of the benefits of the public in the society. When the Landowner dis-vested the forest, he spent some energy and cost. Even if he had bought the land sought to be acquired, that too is with his hard-earned money. Where the landowner got the land sought to be acquired through inheritance, it is also a serious factor that should not be underestimated. In all these circumstances, the landowner is entitled to compensation which is a condition precedent for a valid acquisition. The compensation itself should be adequate.²⁴

Abuse of the Compulsory Acquisition Power by the Government in Nigeria

The saying goes that absolute power corrupts absolutely, and this aptly captures the authority the government has, as it is possible for it to abuse power through compulsory acquisition. This is so because the Land Use Act vested all of the state's land in the governor, who is tasked with holding it in trust for all of the citizens. Section 1 of the Act²⁵ stated thus: "All land included in the territory of each state in the Federation is thus transferred to that state's governor, subject to the requirements of this Act. This land shall be held in trust and managed for the use and mutual benefit of all Nigerians in accordance with the provisions of this Act". Unfortunately, this provision of the Land Use Act has been abused by government over time. Government hide under the guise of this provision and revoke the land of their political enemies in order to undo them. In recent times, some Governors compulsorily acquired the farmland, and land/properties of opposition political party members and revoked their right of occupancy and no reason was advanced by the government for the revocation. This is an abuse of power.

There are different ways Governors abuse this compulsory land acquisition power. The abuse includes the following:

Failure of government to follow due process in acquisition Process: Government failure to obey the laws they make by refusing to follow due process, is an abuse of power. Land acquisition, therefore, must follow proper procedures, especially when it involves interference with individual rights. In order for land acquisition to be lawful, careful adherence to procedural requirements must be observed. Some of the procedures the government must follow in order for acquisition to be valid include: proper notification of the holder of the land or property to be acquired, the purpose of the acquisition must clearly be stated, and compensation must be paid to consummate the acquisition. Once these procedural requirements are not followed, the court has the power to declare such acquisition null and void. Most Governors abuse the power of trust vested in them by the Land Use Act by not following due process or procedures in the acquisition or revocation of the rights of individuals in a land and the constitutional provision of compensation is not strictly complied with.

In *Administrators/Executors of the Estate of Gen. Sani Abacha (Deceased) v. Samuel David Eke-Spiff & Ors*, the government of Rivers State gave the first plaintiff, a retired Permanent Secretary in the River State government, a block of property in Diobu GRA, Port Harcourt. The property was registered in his name as NO. 78 at page 78 in Volume 25 of the Lands Registry in the office at Port Harcourt. He requested approval of a building plan, but his request was denied. Later, he learned that his right of occupation had been revoked without his knowledge or any payment of damages. Major General Sani Abacha received a new allocation of the same plot of land. The Supreme Court ruled that it is unintentionally,

unlawful and unconstitutional to reassign a plot of property that has previously been allotted to someone else without giving the original allottee a notice of revocation and without compensating them. Thus, showing one of the biggest abuses of power by the government.

In *A-G of Bendel State v. Aidenyan*,²⁶ vide a notice number 216 published in the government's gazette of 29/4/76, the appellant purported to have compulsorily acquired the immovable property of the respondent. No compensation was paid to the respondent. In a case before the High Court, the respondent received a ruling that the order's putative acquisition was illegal, void, and unenforceable. In addition, he received damages from the appellant. Appellants were unsuccessful in their appeals to the Court of Appeal and subsequently in the Supreme Court. The Supreme Court ruled unanimously that the right to property guaranteed by section 31 of the 1963 Constitution and section 46 of the 1979 Constitution, particularly with regard to compensation for compulsory acquisition, cannot be violated without the victim being provided with a legal remedy. That the law and the constitution must be followed in all instances of compulsory acquisition.

In some cases, the government hide under public interest to acquire land and revokes the rights of individual and reassigns the same to another person or individual. In *Ereku v. Military Governor of Mid-Western State Nigeria*,²⁷ the first respondent's purchase of the appellant's property under the then-applicable Midwestern State's Public Lands Purchase Law was contested by the appellant. The government of the now-defunct Mid-Western State of Nigeria issued a notice of acquisition, compulsorily seizing the appellant's land in Warri for public purposes. The first respondent then granted McDermott Overseas Inc. a lease on the newly acquired land. This firm was established under the Nigerian Companies Act, and its goals included the creation of structures for the mining and oil industries as well as the growth of the Mid-Western State's economy and industry. The first respondent argued that the acquisition of the land and subsequent grant of the lease to McDermott Overseas Inc. was for a public purpose because the company's goal aligned with the first respondent's goal of industrial development." Rejecting this submission, Elias CJN remarked:

At first glance, these submissions would seem to be under some pressure, but then one reads the *ipsisimaverba* of section 2(h), which says the following: "public purpose" refers to a public purpose as hereinafter defined insofar as such purpose relates to any matter regarding which the Government of the Region has the authority to enact laws, and includes (h) for or in connection with housing estates, economic, industrial, or agricultural development to get ownership of property needed for or related to such reasons.

In *Samuel Ononuju & Anor v. Attorney General of Anambra State & Ors.*,²⁸ a large area of land was forcibly obtained by the federal government for its use, but after being granted to the third respondent, a private person, its use was changed to a private purpose. The third respondent, to whom the land grant was made, was alleged to have "never used the land for public purpose within the meaning of section 50 of the Land Use Act, rather he built flats on it, part of which he rented to bank employees, lecturers in nearby universities, and some private individuals from whom he collected rents," according to the appellants. However, the Court determined per Aderemi JSC that "... Unless the land is taken compulsorily in line with the Land Use Act, such as for an overriding public interest or for a public purpose by the Local Government or State Government, no one, including the government, may deprive a holder or occupier of a parcel of land".

Once the laid down procedure for acquisition is not followed, it renders the acquisition illegal or unlawful. In *Chief Commissioner, Eastern Province v. Ononye & Ors.*,²⁹ a piece of land was purchased in Onitsha under duress with the intention of leaving it to a business engaged in commerce. According to the Court, it is impossible to claim that a lease of property that is meant for business has compulsorily been acquired for a public purpose. Similarly, in *Bello & Ors., v. the Diocesan Synod of Lagos & Ors.*,³⁰ the appellants sued the 1st-4th respondents jointly and severally for damages done to the appellant's property at 1, Edwin Street, Lagos due to the negligence/nuisance of the 2nd – 4th respondents in the building operations carried out by the 1st – 4th respondents on their land at St. John Church, Aroloya, Lagos adjoining the appellants' property. The 1st – 4th respondents in their defence alleged that the Lagos State Executive Development Board (LEDB), the Appellants had received the proper notice of revocation after the City of Lagos had purchased the contested land for public use in accordance with section 43 of the Lagos Town Planning Act. The Appellants later joined the LEDB as the 5th respondent and the issue of compulsory acquisition became central in the determination of the case. According to the argument made on behalf of the appellants, the 5th Respondent was not eligible for relief under section 45(2) of the Town Planning Act because the purchase of the land and subsequent grant of that land to St. John Church did not serve a "public purpose" or "cannot and does not entail the preservation or improvement of Lagos' facilities." The notice of acquisition stated that the proposed acquisition is for the extension of St. John Church, Aroloya, Lagos, and in the body of the notice it was stated that the land was acquired by the LEDB for public purpose only." The Supreme Court ruled that the acquisition of the Appellants' land was unlawful since it was not done for public purpose. According to the Court, the case "exemplified the position where a statutory body in abuse of compulsory powers has taken over the property of a subject matter not for public purpose for which its powers are created and vested in it but for other purposes."

Another instance of the application of the power of forced acquisition occurred in the case of *Yakubu v. Impresit Bakolori Plc. & Ors.*,³¹ where the Plaintiff/Appellant filed a lawsuit against the Defendants/Respondent because he owned the property at issue in the appeal. The Appellant further asserted that he discovered the Respondents had entered his property and dug it up sometime in April 1999. The Respondents were P.T.F Contractors working on an irrigation plan, he learned after making inquiries. When he addressed the Respondents, they summoned him to a meeting and told him that the Adamawa State Government was purchasing land for irrigation, including his own farm, and that they would be collecting more land in the future. The High Court lawsuit that resulted in this appeal against the judgment of the High Court 7 Yola Adamawa State given on April 10, 2001, was the result of the Appellant's unsuccessful attempt to stop the Respondents. The plaintiff/appellant, who was unhappy with the verdict, appealed it.

The appellate Court relying on the cases of *Provost, LACOED v. Edun*³² and *A.G. Bendel State v. Aideyan*³³ held as follows:

According to the legislation, there are a number of requirements that must be satisfied before a person's property may be acquired for a public purpose, including:

(a) He, the occupier, a person with an interest in the land, or any other parties qualified to sell or transfer the land had to have been given notice of the intention to do so by prominently posting it on the property.

(b) The notice must be delivered personally or left at the recipient's last known residence or place of business; and

(c) At least two national daily newspapers with a circulation in the state must also publish the notice once in the state gazette after it has been served on the person.

Some laws outline the process for how the government acquires property. Government is required by law to abide by the statutes that it has established, and it is also expected to do so. Therefore, it is the responsibility of the Courts to intervene against the government and in favour of the private citizen where the government violates its statutes by failing to follow the established method for the acquisition of private property.

Furthermore, in the case of *NITEL v. Ogunbiyi*,³⁴ a revocation notification that was not personally delivered to the property owner at the address that the government was aware of was declared invalid by the Court of Appeal. In this case, the Kwara State Government allegedly acquired the Respondent's sizable parcel of land next to the General Post Office through the issuance of a notice in order to establish a telephone exchange building for the Appellant. The Appellant admitted that the Respondent lived in Lagos at all relevant times and had four constructions on the aforementioned land. The respondent was not served with the notice of compulsory acquisition in Lagos, where he lived. Instead, it was tacked on the structure. The respondent then filed a lawsuit to contest the legality of the aforementioned acquisition, claiming that the revocation was illegal and the acquisition was invalid because the notice was not personally served. The Respondent's argument that the right had not been properly canceled in accordance with Section 28(6) was upheld by the Court of Appeal.

Failure of the government to pay adequate compensation: Government often fails to adequately compensate landowners for the value of their land leading to disputes, and dissatisfaction by property owners. They fail to obey the constitutional provision of Section 44(1) which provides thus:

No moveable or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law that, among other things:

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Failure on The Part of Government to Set Up Land Use and Allocation Committee:

Section 2(2) of the Act mandates the establishment of the Land Use and Allocation Committee (LUAC) to help the Governor in the management and administration of urban lands under his care. The functions of the LUAC are threefold. These are expressed in the Land Use Act as (i) Advising the State Governor on any matter connected with the management of land in an urban area; (ii) Advising the State Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and (iii) Determining disputes as to the amount of compensation payable for improvements on land. When there is dispute as to inadequate compensation for land compulsorily acquired by government, the Land Use and Allocation Committee is where the aggrieved person is supposed to appeal to, however this committee is

not constituted in most states. And government in most of the states in Nigeria have failed to set up this committee for fear that their abuse of power would be checkmated.

Effects of Non-Compliance with the Procedure for Compulsory Land Acquisition

Where the law specifies how a particular procedure for land acquisition should be done, it must be strictly adhered to. If not, Non-Compliance with Procedure for Revocation where the procedure for revocation has not been complied with, will enable the Court to void such revocation on the grounds that it did not accomplish the intention set forth in the notice or that it did not sufficiently further the general welfare. In *Osho v. Foreign Finance Corporation*, the Court emphasized that "the Governor does not have the authority to revoke the statutory right of occupancy and award it to a private person or for any other reason than those listed in section 28(2) of the Act, with the exception of revocation on the grounds of alienation under section 28(2)(c)." This is so, even where the purpose for which the private person uses the land is, similar to public purpose.

The legislation and method for revoking an occupancy permit are extremely plain and straightforward, yet most acquiring authorities typically follow the practices that suit them best, even when doing so is against the law. It is observed that under section 44 of the Act, a notice of revocation may be served personally or by substituted means even without recourse to court for any order of substituted service. All the substituted methods are set out in the section. However, in their usual attitudes of impunity and disregard for the law. Acquiring authorities publish revocation notices in newspapers, through radio or television announcements, mistakenly believing that once a notice is gazetted, it automatically applies to the general public. Any notice of revocation that does not precisely adhere to requirements of section 44 of the Act, has been struck out by the superior courts without hesitation. In *Ononuju v. AG Anambra State*.³⁵ One of the questions on the Supreme Court's agenda was whether the Court of Appeal's majority decision, which affirmed the trial court's conclusions that letters of revocation were served on the appellants, was legally accurate. The Court's stance was unambiguous. According to its conclusion, the only way the appellants could have lost their title was by compulsory acquisition and strict respect to the Land Use Act's regulations, and that as a necessary condition for a legitimate compulsory acquisition. According to section 44(a), (b), and (c) of the Act, the appellants had a right to receive service of the notice of revocation. The court ruled that the notice's publication in the Anambra State Government gazette was insufficient.

In the Sani Abacha case (Supra), noncompliance with the legal requirements for compulsory acquisition—specifically, the failure to serve notice of revocation on the 15 respondents—was one of the grounds for invalidating the purported revocation of the right of occupancy. The court deemed this failure to be fraudulent. Therefore, while the requirements of the governments' expanding infrastructural development may need the forced acquisition of land for the overriding good of the public, the law and procedure for such acquisition must be scrupulously followed. This is due to the fact that "the right to expropriate private interests necessarily implicates the right of the person to be expropriated ... As a result, the person who is being refused possession of his property has a right to be informed that the government is seizing it."

Conclusion and Recommendations

The compulsory land acquisition powers by Governors in Nigeria seem overbearing and unjust. It is recommended that, the power should be derogated from by taking the following measures:

Review and Strengthen Legal Framework: Review and amend existing laws, such as the Land Use Act of 1978, to ensure that they provide adequate protection for landowners' rights and establish clear procedures for compulsory acquisition.

- I. **Enhance Transparency and Accountability:** Implement measures to enhance transparency and accountability in the compulsory acquisition process, such as public disclosure of acquisition plans, reasons for acquisition, and compensation amounts.
- II. **Ensure Fair Compensation:** Establish mechanisms to ensure that landowners affected by compulsory acquisition receive fair and timely compensation, including the use of independent valuation mechanisms.
- III. **Provide Legal Assistance:** Provide legal assistance to landowners to help them understand their rights and then challenge unfair acquisition practices.
- IV. **Promote Public Participation:** Promote public participation in the decision-making process for land acquisition, including consultation with affected communities and stakeholders.
- V. **Strengthen Oversight Mechanisms:** Strengthen oversight mechanisms, such as the establishment of an independent body to review and adjudicate disputes related to compulsory land acquisition.
- VI. **Capacity Building:** Provide training and capacity building for government officials involved in the land acquisition process to ensure compliance with legal and procedural requirements.
- VII. **Alternative Dispute Resolution:** Promote the use of alternative dispute resolution mechanisms, such as mediation, to resolve disputes related to compulsory land acquisition.
- VIII. **Awareness Campaigns:** Conduct awareness campaigns to educate the public about their rights and the procedures for challenging unfair land acquisition practices.
- IX. **Review Compensation Rates:** Periodically review compensation rates to ensure that they are fair and reflective of market values.

If the above measures are implemented, it will reduce the abuse of compulsory land acquisition power by the government in Nigeria and ensure that landowners' rights are protected.

Endnotes

- ¹ G. O. Amokaye, *Planning and Compulsory Acquisition Law and Practice in Nigeria* (Concept Publication, 2016) 311
- ² Ibid FAO 45
- ³ G. G. Otuturu & A.Y. Abdullahi 'Compulsory Land Acquisition and Revocation Powers in Nigeria' [2019] 2(1) *Journal of Property and Contemporary Issues*, 88-101., Idiedo V. O. Otuturu G. G & Abdullahi A.Y. (2024). An Appraisal of Compulsory Land Acquisition and Compensation Practice in Nigeria: A Case Study of Bayelsa State. *Dynamic Multidisciplinary Journal of Nigeria*, 4(4).
- ⁴ Ibid.
- ⁵ S 44(1)CFRN 1999, as amended,
- ⁶ ACHPR, Articles 14 and 17
- ⁷ Ibid, Article 21 (Right to Property)
- ⁸ (2009) 7NWLR (Pt. 1139) 97
- ⁹ (1991) 4 NWLR (Pt 184) 157
- ¹⁰ N26
- ¹¹ (1992) 7NWLR (Pt 255) 543
- ¹² (1997) 10 NWLR (Pt 525) 489
- ¹³ (2001) 4NWLR (Pt 702) 112
- ¹⁴ CC Wigwe, *Land Use and Management Law* (Mountrest University Press 2016) 111
- ¹⁵ (2012) 3 SC (pt. 111) 72
- ¹⁶ S. 28 LUA, S. 44CFRN
- ¹⁷ O. O. Chasmia, 'Examining the Main Conditions Precedent for a Valid Compulsory Acquisition of Land In Nigeria. A Case for the Landowner' 2019, 11 (1). *The Journal of Property Law And Contemporary Issues*, 153-161.
- ¹⁸ (2009) 7 NWLR (PT 1139) 97
- ¹⁹ (2001) 18 NWLR (PT 746) 726
- ²⁰ (2009) 10 NWLR (PT 1148) 182,
- ²¹ Section 28 (6) see also *Adole v Gwar* (supra)
- ²² Amokaye
- ²³ J.F Fekumo, *Oil Pollution and Problems of Compensation in Nigeria* (F & F Publisher 2001) 17
- ²⁴ C.L. Deeyah & V.A. Akujuru 'Assessing the Effectiveness of the Nigerian Compulsory Acquisition Practice in Road Infrastructural Provision in Rivers State', {2016} 5 (4) *Asian Journal of Social Science & Humanities*, 77
- ²⁵ Land Use Act 1978
- ²⁶ (1989) 4 NWLR (Pt 118) 646SC
- ²⁷ (1974) All NLR 695
- ²⁸ (2009) 10 NWLR (Pt. 1148) 182
- ²⁹ (1944) 17 All NLR 42
- ³⁰ (1973) 11 S.C. 103
- ³¹ (2011) 6 NWLR (Pt. 1244) 564
- ³² (2004) 6 NWLR (Pt. 870) 476
- ³³ (1987) 1 NWLR (Pt. 50) 413
- ³⁴ (1992) 7NWLR (Pt 255) 543
- ³⁵ FAO(n27) 16