

## LEGAL REGIME FOR COMPULSORY ACQUISITION OF LAND IN NIGERIA: RESOLVING THE CONFLICT BETWEEN THE CONSTITUTION AND THE LAND USE ACT\*

### Abstract

Compulsory Acquisition is the process by which national or regional governments obtain properties for developmental purposes when they consider this to be in the best interest of the community upon the payment of prompt and adequate compensation to the owners of the properties. In Nigeria, there are two principal legislations regulating compulsory acquisition. They are the Constitution of the Federal Republic of Nigeria and the Land Use Act. Sections 43 and 44 of the Constitution encapsulates the right of every Nigerian to acquire and own immovable properties in any part of the country and provides for such rights not to be compulsorily acquired without the payment of prompt and adequate compensation. Section 28 of the Land Use Act, on the other hand, empowers the Governor to revoke a right of occupancy for overriding public interest and entitles any person whose right of occupancy has been revoked to compensation for unexhausted improvement on the land which is the subject of the right of occupancy and neither for the land itself nor for the right of occupancy. In view of the seeming conflict between the provisions of the above legislations, this work undertook a comparative and critical examination of the two legal frameworks for compulsory acquisition in Nigeria vis-à-vis the United Nations' guideline on compulsory acquisition of land and compensation. It was found that the legal regime for revocation under the Land Use Act is in conflict with the legal regime for compulsory acquisition under the Constitution. It was also found that the legal regime for revocation of title does not meet the requirement contained United Nations' guideline on compulsory acquisition of land and compensation and therefore needs to be reviewed. In response, the work recommends that the legal regime for revocation of right of occupancy and compensation under the Act should be reviewed to bring it in tandem with the current global trend on the subject as encapsulated in the United Nations' guideline on compulsory acquisition of land and compensation.

**Keywords:** Compulsory Acquisition of Land, Constitution of the Federal Republic of Nigeria 1999 (as amended), Land Use Act, Conflict

### 1. Introduction

Compulsory Acquisition or purchase is the process by which national or regional governments obtain properties for developmental purposes when they consider this to be in the best interest of the community. It is the power of the government to acquire private rights with or without the willing consent of their owners in order to benefit the society.<sup>1</sup> This power is based on the principle of sovereignty of the State which in turn is based on the principle of economic self-determination,<sup>2</sup> and has been recognized from time immemorial.<sup>3</sup> The process is compulsory but not confiscatory; thus the owner's interests in the property are converted into right to claim compensation for their loss.<sup>4</sup> However, it should be stated that governments are perhaps less anxious to affirm this inherent and unquestionable right to compensation than they are concerned to ensure that their acquisitions are achieved with a minimum of disturbance and suffering. By and large, whether or not they are obliged to provide just terms, governments are under obligation to act with fairness in relation to the measure of compensation to be given to the dispossessed property owner.<sup>5</sup> The power of the government to acquire and hold land for the purpose of their respective functions is predicated upon firstly, the doctrine that the power is incidental to the existence of the government and to the discharge of their duties,<sup>6</sup> and secondly, on the postulations of the sociological school of thought to the effect that the government exists to 'make the good of existence and means of satisfying claims go round, as far as possible, with the least friction and waste'.<sup>7</sup> The power of compulsory acquisition is thus an

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\*By Chinedu A. ONAH, LL.M, Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, P.M.B. 5025, Awka, Anambra State, Nigeria. Email: ac.onah@unizik.edu.ng; chineduonah@nigerianbar.ng. Phone Number: +2348064794333

<sup>1</sup>X Zhang & H Lu, 'compensation for compulsory Acquisition in china: To Rebuild Expropriated Farmer's Long Term Livelihoods' <<http://www.escholarship.org>> accessed on 05/03/2022.

<sup>2</sup>U S F Nnabue & O Otitodiri, 'Enforcements of International Customs on Expropriation of Foreign Properties and the Plight of Developing Countries' (2015) 6 *GRBPL No. 1*, 77.

<sup>3</sup>J F Garner, *Compensation for Compulsory Purchase: A Comparative Study*; (London: UKNCCL, 1975); K Davies, *Law of Compulsory Purchase and Compensation*; (5<sup>th</sup> edn, England: Butterworth, 1994) p.4

<sup>4</sup>C Harpum *et al*, *Megary & Wade The Law of Real Property* (6 edn; London: Sweet & Maxwell, 2000) p. 1358.

<sup>5</sup>G L Fricke *Compulsory Acquisition of Land in Australia* (2<sup>nd</sup> edn, Sydney, Australia: Law Book Co., 1982) 2.

<sup>6</sup>A O Bello, *op cit*, p. 16; B O Nwabueze, *Federalism in Nigeria under the Presidential Constitution* (London: Sweet & Maxwell, 1983) p.153.

<sup>7</sup>D L Lloyds & M D A Freeman, *Lloyd's Introduction to Jurisprudence* (London: Sweet & Maxwell, 1994) p. 524; H Morris 'Dean Pound's Jurisprudence' in R S Summers (ed), *More Essays in legal philosophy* (California: University of California Press, 1971); R Pound, *Jurisprudence* (St Paul Minnesota: West Publishing Company, 1959) pp. 133-135; J Marcus, *Law of Compulsory Acquisition* (UK: Law Book Co; 2010) p. 24.

inherent and unquestionable power of governments all over the world.<sup>8</sup> The power is variously described as compulsory purchase,<sup>9</sup> expropriation,<sup>10</sup> eminent domain,<sup>11</sup> resumption,<sup>12</sup> or revocation.<sup>13</sup> However, it is nothing more than the extinction of private ownership of land when it conflicts with public interest in the land.<sup>14</sup> The right of compulsory acquisition is founded on the existence of private property rights. Thus, it gives *a priori* recognition to such private property right.<sup>15</sup>

In modern times, especially in developed and advanced countries, the purview of compulsory acquisition process has extended to include regulatory taking; whereby governmental conducts or regulations that impact negatively on individual property rights are seen as compulsory acquisition of property rights of citizens.<sup>16</sup> These arise in situations where, though the land are not physically taken, the acts of the government or regulations made by it have so restricted the land's economic value and use in the hands of private owners.<sup>17</sup> In the words of Justice Holmes, this occurs when government regulation of private property rights 'goes too far'<sup>18</sup> and deprives the land owner of the value of his land through enactment of a statute or promulgation of regulation, refusal to issue a permit, etc. It must be observed that ownership derived from compulsory acquisition is distinguishable from requisition which is only a temporary takeover of the use and occupation of private property by the government in the interest of the general public and/or for public use.

In Nigeria, there are two principal legislations regulating compulsory acquisition. They are the Constitution of the Federal Republic of Nigeria<sup>19</sup> and the Land Use Act. Sections 43 and 44 of the Constitution encapsulates the right of every Nigerian to acquire and own immovable properties in any part of the country and provides for such rights not to be compulsorily acquired without the payment of prompt and adequate compensation. The said section also empowers any person whose rights have been compulsorily acquired to challenge the adequacy of compensation paid in that regard. Section 28 of the Land Use Act, on the other hand, empowers the Governor to revoke a right of occupancy for overriding public interest and entitles any person whose right of occupancy has been revoked to compensation for unexhausted improvement on the land which is the subject of the right of occupancy and neither for the land itself nor for the right of occupancy.<sup>20</sup> It is the light of the forgoing exposition that this work seeks to examine the two legal frameworks for compulsory acquisition in Nigeria and comparing them to the United Nations guideline on the subject. The guideline by the Food and Agriculture Organization of the United Nations Rome 2008, on Compulsory Acquisition was also reviewed as it contains the 'Best Practices' on the subject which was arrived at after an intense research on the subject.<sup>21</sup>

## 2. Legal Regime for Compulsory Acquisition in Nigeria

### Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria, just like most modern constitutions, makes adequate provision for the protection of land rights. It also empowers the state to acquire private rights in respect of movable and immovable properties in order to benefit the society upon the payment of prompt and adequate compensation.

<sup>8</sup>See for example the Public Lands Acquisition Ordinance 1876 of the Gold Coast; Indian Lands Acquisition Act of 1894. See also M Ndulo, *Law in Zambia*; (Zambia: East African Publishing house, 1984) 247.

<sup>9</sup>As in England.

<sup>10</sup>As in Europe.

<sup>11</sup>As in USA; J B Gelin & D W Miller, *The Federal Law of Eminent Domain* (United State: The Michie Company, 1982) p. 1; *West Encyclopedia of American Law* (St Paul Minnesota: West Group, 1988) Vol. 4, 227.

<sup>12</sup>As in Australia

<sup>13</sup>As in Nigeria.

<sup>14</sup>For example, in South Africa, it has been judicially defined as a means of dispossessing or depriving an owner of his property: *Benckenstrater v. Sand River Irrigation Board* 1964 (4) SA 510 (1) at 515 A. See also M Jacobs, *The Law of Expropriation in South Africa* (South Africa: Juta, 1982) 1.

<sup>15</sup>A Otubu, 'Private Property Right and Compulsory Acquisition Process in Nigeria: Past Present and Future' *loc cit*.

<sup>16</sup>J B Meville, 'Regulatory Taking in Canda <<http://www.expropriation law.ca/articles/art00300.asp>> accessed on 04/03/2022.

<sup>17</sup>A J Schutt, 'The Power Line Dilemma: Compensation for Diminished Property Value caused by Fear of Electromagnetic Fields' (1996) Florida State University Law Review L <[http:// caselaw.lp.findlaw.com/data/law\\_reviews/oi7fsu\\_lr/241\\_Shutt\\_htm](http://caselaw.lp.findlaw.com/data/law_reviews/oi7fsu_lr/241_Shutt_htm)> accessed on 04/03/2022.

<sup>18</sup>*Pennsylvania Coal Co v Mahon* (1922) 260 US 393.

<sup>19</sup> Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004.

<sup>20</sup> Section 28 of the Land Use Act

<sup>21</sup>FAO's Land Tenure Studies are concise presentations on the often complicated and controversial subject of land tenure, especially as it relates to food security, poverty alleviation and rural development. These studies reflect what FAO and its many international collaborators have discovered are 'good practices' for a particular aspect of land tenure and its administration. The studies cover various aspects of improving access to land and other natural resources and increasing tenure security.

Sections 43 and 44 of the Constitution make provision for the right of every Nigerian to acquire and own immovable properties in any part of the country and protect such rights from being compulsorily acquired without the payment of prompt and adequate compensation. The said sections of the Constitution provide as follows:

43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.
44. (1) No moveable property 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 a 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.

It is clear from the tenure of the above provisions of the Constitution that every Nigerian has the fundamental right to acquire and own properties which includes land in any part of the country. It is also clear that while section 43 of the Constitution acknowledges the right of the State to compulsorily acquire such property, it must be done under a regime that guarantees the prompt payment of adequate compensation and the right of the person whose land has been compulsorily acquired to challenge the adequacy of the compensation paid in that regard.

### Land Use Act

By virtue of Section 28 of the Land Use Act, it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest. Section 28(2) defines overriding public interest in the case of a statutory right of occupancy to mean unlawful alienation, requirement of land by the Local, State or Federal Government<sup>22</sup> for public purpose or the requirement of the land for mining purpose or oil pipelines or any purpose connected therewith. In the case of a customary right of occupancy, over-riding public interest is defined almost the same way as in the case of statutory right of occupancy the only difference being the addition of the requirement of the land for extraction of building materials.<sup>23</sup> Section 51 of the Land Use Act contains purposes which the Act prescribes as public purposes where the purpose of the revocation is requirement of land by the Local, State or Federal Government for public purpose. In *Osho v Foreign Finance Corporation*<sup>24</sup> the Supreme Court, while interpreting the provisions of Sections 28 and 51 of the Land Use Act, held that a purported revocation of a right of occupancy for any purpose outside those prescribed in the Act cannot amount to revocation for public purpose and is thus unlawful. It is submitted however that 'public purposes' as prescribed under Section 51 of the act was never made to be exhaustive as deducible from the language used by the Act in defining same. The preamble 'includes' as used suggests that there may be other public purposes not being the ones specifically mentioned in the Act. This is provided that the application of such purpose is in consonance with the *ejusdem generis* rule of interpretation. The Governor may also revoke a statutory right of occupancy on the ground of breach of any of the implied covenants under Section 10 or terms expressed on the certificate of occupancy or any special contract made under Section 8 or for a refusal to accept and pay for such certificate.<sup>25</sup>

The conditions for a valid revocation are contained in section 28 (6) & (7) of the Act as follows:

1. Revocation must be by a person who has the power to revoke *i.e.* the Governor or a public officer duly authorized by the Governor;<sup>26</sup>
2. Notice shall be given stating the purpose of revocation as prescribed by the Act<sup>27</sup> and describing to specificity the subject-matter of revocation.<sup>28</sup>
3. Notice shall be served on the holder.

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<sup>22</sup>It is pertinent to note that the Federal or Local Government have no right to revoke a right of occupancy. The power is exclusively reserved for the Governor which he exercises personally or through his delegate - Land Use Act s. 28(6). Though it must be observed that in case of a land which is non-urban area (subject of a customary right of occupancy), and in respect of which a certificate of occupancy has not been issued, the Local Government may enter upon, use and occupy for same for public purposes pursuant to section 6(3) of the Act.

<sup>23</sup> Land Use Act s. 28(3).

<sup>24</sup> (1991) 4 NWLR (Pt. 184) 157.

<sup>25</sup> Land Use Act s. 28(4).

<sup>26</sup> *Majiyagbe v Attorney General of Northern Nigeria* (1957) NNLR 158; *Umar Ali & Co. (Nig) Ltd v Commissioner for Land and Survey & Ors* (1983) 4 NCCR 571.

<sup>27</sup> Where the revocation is for public purpose, it is not enough to state just that, there is the need to spell out the particular public purpose as stated in s. 51 of the Act – *Ereku v Military Governor of Mid-Western State* (1974) 10 S.C. 59; *Obikoya v Governor of Lagos State [1987] 1 NWLR (pt. 50) 385*. Thus to publish a blanket notice of revocation which fails to state what type of public purpose for which the revocation is being made is unlawful and void.

<sup>28</sup> *Provost of Lagos State College of Education & Ors v Edun & Ors* [2004] 6 NWLR (Pt. 870) 476.

4. Notice must be proved to have come to the knowledge of the person concerned i.e. there must be proof of the receipt of such notice.<sup>29</sup>

Upon the receipt of such notice issued on the holder of a right of occupancy, his title shall be extinguished forthwith or on such later date as may be stated in the notice.<sup>30</sup> It is pertinent to note that the provision of Section 30 of the Act provides that any contention or dispute in respect of compensation under the Act has to be referred to the Land Use and Allocation Committee of the state whose decision on the matter is final;<sup>31</sup> thus ousting the jurisdiction of the court. It is submitted that this provision of the Land Use Act cannot stand in the face of its obvious contradiction with the provision of section 6 of the Constitution of the Federal republic of Nigeria vesting the judicial powers of the Federation the courts established by the Constitution; section 43 entitling a person whose property is compulsorily acquired to challenge the adequacy of the compensation thereof; as well as section 272 of the Constitution of the Federal republic of Nigeria vesting a very wide jurisdiction on the High Court of a state.<sup>32</sup> Section 33 (1) of the Act also provides for the option of resettlement by way of provision of reasonable accommodation in lieu of compensation. According to the said section of the Act, where a right of occupancy in respect of any developed land on which a residential building has been erected is revoked under the Act, the Governor or the Local Government, as the case may be, may in his or its discretion offer in lieu of compensation payable in accordance with the provisions of this Act, resettlement in any other place or area by way of a reasonable alternative accommodation; if appropriate in the circumstances.

### 3. United Nations Study on Compulsory Acquisition of Land and Compensation

Compulsory acquisition of land, in most cases, adversely affects the persons whose lands are acquired. Good governance and policy is therefore necessary to provide a balance between the need of the government to acquire land and the need to protect the right of people whose land are to be acquired. In furtherance of the foregoing, the Food and Agricultural Organization of the United Nations, in its research study, 'Land Tenure Studies 10; Compulsory Acquisition of Land and Compensation', conducted between 2008 and 2009 identified what it considered the 'Good Practice' in the process of compulsory acquisition.<sup>33</sup> According to the study, the process and procedure should be predicated on protection of due process and fair procedure, good governance and equivalent compensation.<sup>34</sup> This implies firstly, that laws that place reasonable constraints on the power of the government to compulsorily acquire land, strengthen the confidence of people in the justice system, empower people to protect their land rights and increase tenurial security should be encouraged. Such laws should provide for appropriate advance consultations, participatory planning and accessible mechanisms for appeals, and should limit the discretion of officials. Secondly, agencies that compulsorily acquire land should be accountable for the *bona fide* implementation of the legislation empowering them to so do. Laws that are not observed by local officials undermine the legitimacy of compulsory acquisition while good governance reduces the abuse of power and opportunities for corruption. Thirdly, claimants should be paid compensations which are no more or no less than the loss resulting from the compulsory acquisition of their land. Such laws should ensure that affected owners and occupants receive equivalent compensation, whether in money or alternative land. Clear and consistent valuation bases for achieving these should be set out.

A balanced approach to compulsory acquisition requires a respect for the human rights of owners and occupants of the land to be acquired. More so, compulsory acquisition must only be used for public purposes, for public uses and/or in the public interest. Relevant laws and regulations should clearly identify the authorized government bodies that have the power to compulsorily acquire land in order to reduce opportunities for abuse of power. Each agency authorized to compulsorily acquire land may have its own regulatory guidelines on what acquisitions are permitted and how to carry out the processes defined in national legislation. Attention to the procedures of compulsory acquisition is critical if a government's exercise of this power is to be efficient, fair and legitimate. According to the study under review, generally, a well-designed compulsory acquisition process for a development project should include the following steps:<sup>35</sup>

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<sup>29</sup> *Osho v Foreign Finance Corporation*, (*supra*).

<sup>30</sup> Land Use Act s. 28(7).

<sup>31</sup> Land Use Act s.47 (2)

<sup>32</sup> Constitution of the Federal Republic of Nigeria (as amended) s.1 (3), *Kanada v Governor of Kaduna State & Anor* (1986) 4 NWLR (Pt. 35) 361

<sup>33</sup> S Keith *et al*, 'Land Tenure Studies 10, Compulsory Acquisition of Land and Compensation' <<http://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf>> accessed on 08/03/2022

<sup>34</sup> *Ibid*, 6; O Otitodiri, 'Protection of Foreign Investment in Nigeria: A Case for a Model Investment Treaty' (2016) 7. GRBPL No 1, 122-133. See also *Provost College of Education v Edun* [2004] 6NWLR (Pt. 870) 49.

<sup>35</sup> S Keith *et al*, *op cit*. p. 16.

1. Planning: Determining the different land options available for meeting the public need in a participatory fashion. The exact location and size of the land to be acquired is identified. Relevant data are collected. The impact of the project is assessed with the participation of the affected people.
2. Publicity: Notice should be published to inform owners and occupants in the designated area that the government intends to acquire their land. People should be requested to submit claims for compensation for land to be acquired. The notice must describe the purpose and process, including important deadlines and the procedural rights of people. Public meetings should be held to provide people with an opportunity to learn more about the project, and to express their opinions and needs for compensation.
3. Valuation and submission of claims: Equivalent compensation for the land to be acquired is to be determined at the stated date of valuation. Owners and occupants are to submit their claims. The land is valued by the acquiring agency or another government body. The acquiring agency considers the submitted claim, and offers what it believes to be appropriate compensation. Negotiations may follow.
4. Payment of compensation: The government pays people for their land or resettles them on alternate land.
5. Possession: The government takes ownership and physical possession of the land for the intended purpose.
6. Appeals: Owners and occupants are given the chance to contest the compulsory acquisition, including the decision to acquire the land, the process by which the land was acquired, and the amount of compensation offered.
7. Restitution: Opportunity for restitution of land if the purpose for which the land was used is no longer relevant.

On the issue of what may be compensated, it is the position of the study under review that depending on the jurisdiction, the total compensation may be based on:

1. The land itself.
2. Improvements to the land, including crops.
3. The value of any financial advantage other than market value that the person may enjoy by virtue of owning or occupying the land in question.
4. Interest on unpaid compensation from the date of possession.
5. Expenses incurred as a direct and reasonable consequence of the acquisition.
6. Loss in value to other land owned by the affected owner due to the project. In some countries, the compensation will be reduced if the retained land increases in value as a result of the project, a condition sometimes referred to as 'betterment'.
7. Legal or professional costs including the costs of obtaining advice, and of preparing and submitting documents.
8. Costs of moving and costs of acquiring alternative accommodation.
9. Costs associated with reorganization of farming operations when only a part of a parcel is acquired.
10. Loss in value of a business displaced by the acquisition, or if the business is permanently closed because of the acquisition.
11. Temporary loss of earnings.
12. Personal hardship.
13. Other losses or damages suffered.<sup>36</sup>

The study also identified actors that lead to unjust compensation as including;

1. Poorly drafted laws and regulations create confusion, error, conflicting outcomes, and opportunities for abuse of power.
2. Determination of equivalent compensation is difficult when people do not have clear legal rights to the land.
3. Affected owners and occupants, especially the poor who are unaware of their rights, often have less negotiating power, experience and skills than the acquiring agency.
4. A lack of standards and good governance practices allows corrupt officials to provide favourable compensation to those who offer bribes.
5. Accurate valuation is difficult because it is time-consuming and expensive. Moreso, there is usually shortage of skilled valuers. It may also be difficult to financially quantify non-economic losses, e.g. religious, historical or cultural claims to the land.
6. News of the project may affect the market value of the land.
7. Appeals processes that are expensive and difficult to use are accessible only to the rich. The poor may have little option but to accept the offer of compensation even if they believe it is inadequate.<sup>37</sup>

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<sup>36</sup> S Keith *et al*, *op cit*. p. 31.

<sup>37</sup> S Keith *et al*, *op cit*. p. 25.

#### 4. Highlighting the Conflict between the Constitution and the Land Use Act

As we have earlier observed, compulsory acquisition is predicated on the existence of private property right and gives *a priori* recognition to individual ownership of land or private property right. This presupposes that the land, being acquired is owned by a person outside the government. This justifies the need for the payment of compensation. Thus, there cannot be compulsory acquisition in the absence of private ownership of land;<sup>38</sup> except where the interest which is acquired is less than ownership. The need for the above clarification is necessary in the light of the manifest provisions of the Act which nationalised all land in Nigeria.<sup>39</sup> It is no more in doubt that by virtue of section 1 of the Act, all land in Nigeria was nationalised upon the coming into effect of the Land Use Act. In this wise, Uchendu has observed, while referring to Section 1 of the Act that, by implication, the logical sovereign in land matters though not specifically mentioned in the law, is the Nigerian State.<sup>40</sup> The same position seems to have been adopted by Professor Udoh when he asserted thus:

The first and foremost provision of the Land Use Law [Land Use Act] is that all lands in the territory of each state of Nigeria are vested in the Governor of that state.... For the Southern states, this provision implies a revolutionary change in the ownership and control of land, but not so in the Northern states which had operated a similar law since 1916. For the Southern states the new position was that state Governor had replace (sic) the family (or clan) head, the oba or any other traditional ruler as the trustee of land for the people.<sup>41</sup>

Umezulike in furtherance of this position, asserted thus:

The Act clearly nationalized all land in Nigeria through a combination of two approaches. It vested all land in the State and abolished private ownership of it which was accomplished by making a right of occupancy the largest interest capable of existing in land in favour of a private person or anybody. It is explicitly provided that no greater interest than a right of occupancy can pass to any person or body under the existing instrument.<sup>42</sup>

The question that arises at this point is whether the Governor can compulsorily acquire the land which is now vested in him. The answer to the question is obviously in the negative. Thus, the Act used the expression 'revocation of right of occupancy'<sup>43</sup> as distinct from 'compulsory acquisition of land' because the only right vested in the individual under the Act is a mere 'user right' otherwise called the right of occupancy granted by the Governor;<sup>44</sup> as opposed to ownership rights hitherto existing in Individuals.<sup>45</sup> As pointed out earlier, under Section 29 of the Land Use Act, no compensation is payable for the value of the land *per se*, the right of occupancy or for disturbance thereof; compensation is only payable for the 'unexhausted improvement' on the land.<sup>46</sup> The rationale for this manifestly unjust provision is that land is owned by the state and so it cannot compensate the individual for the state's property.<sup>47</sup> This assumption is insensitive to the proprietary right of the original land owners who for long, have toiled on the land and traditionally enjoyed the benefits arising therefrom. It also neglects the fact that upon the Land Use Act expropriating the right to absolute ownership vide Section 1 of the Act, no compensation was paid to customary land owners in respect of their land holdings. The point being made hereinabove would be better appreciated in view of the definition of revocation thus; an annulment, cancellation, or reversal, usually of an act or power. This would presuppose, when considered in relation to land, that the interest or land 'revoked' was, *ab initio*, vested in and granted by the revoking authority. It also implies that it is only when a property is absolutely taken that a landowner will be entitled to compensation.<sup>48</sup>

<sup>38</sup> A Otubu, *op cit*.

<sup>39</sup> Land Use Act s.1

<sup>40</sup> V C Uchendu, 'State, land and Society in Nigeria: A Critical Assessment of the Land Use Decree' (1978) *Journal of African Studies* Vol. 6 pp. 62-74.

<sup>41</sup> R K Udo, 'Understanding Nigeria Land Use Law', A paper delivered at First Earth Right Conference held at the auditorium of Niger Delta University, Amassoma, Bayelsa State on 3<sup>rd</sup> March, 2011 <<http://www.earthright.net/course/?q=mode/416>> accessed on 19th February, 2022.

<sup>42</sup> I A Umezulike, *ABC of Contemporary Land Law in Nigeria*, (Enugu: Snapp Press Nig. Ltd, 2013) p. 57.

<sup>43</sup> Land Use Act ss. 5 & 28

<sup>44</sup> Who is in fact, the true and legal owner of all land except those vested in the federal government and its agencies.

<sup>45</sup> A Otubu, *op cit*.

<sup>46</sup> *Upper Benue River Basin Development Authority v Alka & ors* [1998] 2 NWLR (Pt. 357) 329; *Osho v Foreign Finance Corporation (Supra)* at 197;

<sup>47</sup> O G Amokaye 'Convention of Biological Diversity; Access to and Exploitation of Genetic Resources and the Land Tenure System in Nigeria' (1992) *Afr. J. Into & C.L* 86 at 97; J U Oshimiri, 'Award of Compensation to Holders of Undeveloped Plots under the Land Use Act - A case for Reform' (1991) 7 *JUS*, 29; J U Oshimiri, 'Can the Power of Attorney Avoid Consent Provision of the Land Use Act 1978' (1990) 3 (13) *GRBPL* 9 at 13..

<sup>48</sup> Section 44 Constitution of the Federal Republic of Nigeria 1999 (as amended).

What then happens to a landowner whose property is directly and substantially affected by the act of the Government in pursuance of a public project and thereby significantly impairs the value of the property? Shouldn't a landowner be entitled to the protection afforded by the Constitution and the Act if the action of the Government involves a direct interference with or disturbance of his rights? Unfortunately, the impression conveyed by the Act is that no such claim for protection can be entertained in respect of a bare land; contrary to what obtains in other jurisdictions.<sup>49</sup> Thus, under the Land Use Act, when a land is taken over by the state, it is not compulsory acquisition *stricto sensu*; but a revocation of the possessory right granted or deemed granted by the Governor to the private person and the resumption of ownership right by the state. This position is further reinforced by the fact that no compensation is payable for revocation of right of occupancy *per se*; thus a piece of land without any improvement or development thereon attracts no compensation.<sup>50</sup> The above position of the Act is obviously, in contradiction with the manifest provisions of the Constitution which requires prompt and adequate compensation. Assuming without conceding that an 'owner' of a land revoked by the Governor is not entitled to compensation for the land *per se*, can same be said of the 'right of occupancy' itself. It is the opinion of this work that the answer should be in the negative. This is because before the Governor grants a person a right of occupancy, such person is expected to pay a 'premium' as well as other rates, taxes and fees which are usually accessed according to the value of the land in issue. Can it now be said that a right of occupancy which is gotten for a monetary sum should be considered worthless or valueless during revocation? That would be most unfair and unreasonable and does not conform to the idea of adequate compensation as envisaged by the Constitution. Another point of divergence between the constitutional provision on compulsory acquisition and the Land Use Act provision on revocation of right of occupancy and compensation is that fact that the Constitution requires that no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner that 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.<sup>51</sup> However, the land Use Act provides that no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act. As submitted above, the said provision is rendered invalid by its manifest derogation from the provisions of the Constitution.<sup>52</sup>

## 5. Conclusion and Recommendations

It is submitted in the light of the foregoing exposition that the legal regime for revocation of right of occupancy and the compensation regime under the Land Use Act is grossly inadequate and contradicts the express stipulations of the Constitution in that regard. The said regime does not also conform to the current global trends on compulsory acquisition as it does not meet the best practices on the subject. It is skewed to afford the Governor the platform to arbitrarily acquire people's lands without the consequent obligation to pay them adequate compensation. It manifestly works against land owners as they are neither entitled to compensation for land *per se* nor for the right of occupancy in respect of the land. This is also true for an occupier for all he is entitled to is an equivalent of a year's rent paid by him during the year of revocation. This is so even if his right of occupancy has an unexpired residue of 80 years. As highlighted above, the United Nations' study which contains the guideline for compulsory acquisition of land and compensation requires that the process and procedure for compulsory acquisition should be predicated on protection of due process and fair procedure, good governance and equivalent compensation.<sup>53</sup> This, as we explained implies firstly, that laws that place reasonable constraints on the power of the government to compulsorily acquire land, strengthen the confidence of people in the justice system, empower people to protect their land rights and increase tenurial security should be encouraged. Secondly, agencies that compulsorily acquire land should be accountable for the *bona fide* implementation of the legislation empowering them to so do. Thirdly, claimants should be paid compensations which are no more or no less than the loss resulting from the compulsory acquisition of their land. It is the opinion of this work that while the legal regime for compulsory acquisition under the Constitution can be interpreted to meet the above requirement, the legal regime for revocation of right of occupancy under the Land Use Act cannot by any stretch of interpretation meet the above requirement. It is therefore submitted that the legal regime for revocation under the Land Use Act is in conflict with the legal regime for compulsory acquisition under the Constitution and therefore needs to be reviewed.

In view of the foregoing, it is recommended that the legal regime for revocation of right of occupancy and compensation under the Act should be reviewed to bring it in tandem with the current global trend on the subject

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<sup>49</sup>See *Madison Realty Company v. City of Detroit* (1970).315 F Supp 367; *Richmond Elks Hall Association v. Richmond Development Agency* 561 F 2d 1327.

<sup>50</sup> Land Use Act s. 29

<sup>51</sup> Section 43(1)(b) of the Constitution.

<sup>52</sup> Section 47 (2) of the Land Use Act.

<sup>53</sup>O Otitodiri, 'Protection of Foreign Investment in Nigeria: A Case for a Model Investment Treaty' (2016) 7. GRBPL No 1, 122-133. See also *Provost College of Education v Edun* [2004] 6NWLR (Pt. 870) 49.

as encapsulated in the United Nations' guideline on compulsory acquisition of land and compensation. In this wise it is proposed that the Land Use Act be amended to provide as follows;

- a. That compensation be made payable for land that is the subject of the right of occupancy revoked by the Governor. In the event that it is not possible to pay compensation for the land *per se*, compensation should be paid for the right of occupancy which is revoked. Such compensation should be valued at a sum which is no more or no less than the loss resulting from the revocation of the right of occupancy. In this wise, other incidental costs incurred by the land owners should be countenanced.
- b. That owners and occupants are given the chance to contest the revocation of their title, including the decision to acquire the land, the process by which the land was acquired, and the amount of compensation offered.
- c. That owners and occupants are given the opportunity for restitution of land if the purpose for which the land was used is no longer relevant.