

ABUSE OF POWER OF EMINENT DOMAIN IN NIGERIA: A CRITIQUE

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Abstract

This aim of this article is to critically examine the contemporary trends in compulsory land acquisition (eminent domain) in Nigeria, with focus on the deficiencies within the provisions of the Land Use Act 1978, that pertain specifically to the Governor's exercise of eminent domain. This power has unfortunately become a tool susceptible to abuse in Nigeria, with some Governors employing it to revoke and acquire both private and government properties for personal interests, including favouring cronies, family members, and settling political vendettas. Despite persistent calls from diverse stakeholders for amendments to the Land Use Act, meaningful changes have yet to materialize. Utilizing a combined analytical and qualitative methodological approach, the study highlights instances of gubernatorial abuse in compulsory acquisition, exposing the need for immediate corrective measures. The article argues for urgent legislative intervention, advocating for the repeal of the Act. This article specifically proposes that the legislature takes a proactive role in addressing these challenges and emphasizes the importance of public participation in determining projects aligned with the interests of the people. By involving the public in decision-making processes, the true purpose of revocation can be ascertained, mitigating the risk of diversion for extraneous purposes and ensuring accountability. Urgent legislative reform to rectify the flaws in the current legal framework is highly recommended to restore the integrity of compulsory land acquisition, aligning it with the genuine needs and aspirations of the Nigerian people.

Keywords: Compulsory Acquisition, Land Use Act 1978, Governor's Power, Political Vendetta, Public Participation, Legislative Intervention.

Introduction

The preamble to the Land Use Act 1978¹ captures "public interest" as one of the justifications for its enactment; wherein the rights of every Nigerian to use and enjoy land and its natural resources were preserved. The Act vested all land in the territory of a State in the Executive Governor of that State,² to hold and manage such land on behalf of the people, with the enabling power of revocation or expropriation of private properties for overriding public interest.³ Unexhausted improvement jargon.

For the sake of convenience, land and property may be used interchangeably in this article. Property is perceived by a naturalist as immutable and given to man by Almighty God for sustainability and for good livelihood. The positivists on the other hand agree that law is meant to serve two purposes: to provide peace for everyone and to ensure the right to property is protected and preserved. This represents the unspoken assumption of legal positivism which challenges the natural theory that the most enlightened members of society should utilize legislation to design and build a great society. To that extent, the provisions of Act are expected to yield and build a great and better society. However, the reverse has been the case with the Act, land has not been

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¹ The Land Use Act 1978, Cap. L5 Laws of the Federation of Nigeria, 2004 (The Act).

² Section 1 of the Act.

³ Section 28 of the Act.

made available for easy acquisition, the custodian of Act – the Governor – has ended up abusing the power of eminent domain bestowed upon him.⁴

The massive powers bestowed on the custodians of land in Nigeria are being utilized somewhat fraudulently. For instance, the power of revocation under section 28 is now being used as vendetta against political opponents or for settlement of political scores; private or government properties are acquired for private use rather than utilizing them for betterment of the society. The Act is now an instrument for enriching those in authority, while the poor are being displaced with little or no adequate compensation or resettlement as provided by the Act when their properties are tampered with, thereby getting the poor poorer and the rich richer.⁵

According to Aristotle, only matters of the common good are right, as against matters for the rulers' (pursuit of self-interest and corruption) good which are wrong.⁶ But the obvious fact is that the power given to the Executive by the legislature is now being violated, as it is now being used arbitrarily without recourse to the purpose of exercise of such powers and failure to follow the procedure laid down under the Act. This article will consider this arbitrary use of power of eminent domain and suggest ways of improvement.

Due Process for Compulsory Acquisition

Compulsory acquisition of land otherwise known as eminent domain, is the power of government to acquire private rights in land for a public purpose without the willing consent of its owner. The Act is the law specifically governing the procedure for revocation of a right of occupancy in Nigeria as well as the 1999 Constitution of the Federal Republic of Nigeria (as amended). One of the fundamental requirements in revoking or acquiring private interest for a public purpose is strict adherence to laid down procedure for revocation of a right of occupancy. The procedures have to be strictly adhered to otherwise the purported revocation may be held *null* and *void*. The following procedures are laid down under the Act:

Issuance of Notice:

No doubt, the Governor of a State can revoke a right of occupancy for overriding public interest. However, such right must be exercised in strict compliance with the relevant laws not arbitrarily in show of power and authority⁷. The Act requires that the land owner be informed of the intention to revoke his property by the Governor or the President as the case may be. Where land is required for any of public purposes as established under section 28 of the Act, the Governor shall revoke such right of occupancy in the event of the issuance of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes.⁸ Even where the land owner has contravened any of the terms contained in the Certificate of Occupancy, the law requires that the Governor must comply with the provisions of section 28 (6) and (7) of the Act⁹. The issuance of notice alone to the land owner is not sufficient; he is interested in knowing the purpose of revocation and to what use his property will be subsequently applied and if possible, the benefit of such purpose to himself, his family, and the community at large.

⁴ *A-G Imo State v Gov. Rochas Okorochoa* Unreported, Suit No: HOW/947/2019, Hon. Justice T. N. Nzeukwu, Charles Ogugbuaja and Collins Osuji, *The Guardian*, "Court Orders Final Forfeiture of Okorochoa's Property to Imo Government" <<https://guardian.ng/news/court-orders-final-forfeiture-of-okorochoas-property-to-imo-govt/>> accessed 28 August, 2022.

⁵ *A-G Imo State v Gov. Rochas Okorochoa* Unreported (*supra*).

⁶ Maximilian Jaede, "Working Paper: The Concept of the Common Good", <<https://www.thebritishacademy.ac.uk/documents/1851/Jaede.pdf>>. Accessed on 5 February, 2021.

⁷ *Ya'u v Ministry of Land and Physical Planning Kano & Ors*, (2022) LPELR – 58781 (CA).

⁸ Section 28 (4) of the Act.

⁹ *Donli v Abdullahi & Ors*, (2022) LPELR – 58570 (CA).

Service of notice:

A revocation notice, which is not issued in line with section 28 and served in accordance with section 44 of the Act cannot be considered valid. The essence of the notice is for the holder or occupier to react or challenge the revocation if there is any need for him to do so.¹⁰ In the absence of a notice of revocation of a Right of Occupancy, it follows that any purported revocation of the right of occupancy is ineffectual.¹¹

The notice to the title holder shall be duly served 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 that office; or
- (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 person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Notice of acquisition must be specific and precise as to the property to be acquired; the particulars of the public purpose for which such property is acquired must be given; and the acquiring authority must give notice of intention to the owner before publishing same in the gazette. Many a time, notices are merely gazetted without more, the courts have held that publication in the Gazette alone does not constitute sufficient notice. There must be personal service of notice on the occupier of the property¹² and such revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor.¹³ Failure to serve the notice of acquisition on the holder of a right of occupancy whose property is to be revoked provides a sufficient ground for court to declare the purported acquisition *null* and *void*.

Overriding public interest:

The purpose of revocation must be for public purpose. Public purpose includes use of land by the Local Government, State Governor, Federal Government, use for mining purposes or oil pipelines or where the occupier does anything contrary to the provision of the Act, in which case revocation can come as a punishment¹⁴. Public purpose may also include for exclusive Government use or general public use; use by any of government agencies; for proper waste management; for obtaining control over land required for or in connection with development of telecommunications or provision of electricity, mining purposes, rural or urban settlement, economic and agricultural purposes, educational and other social services¹⁵. Any purported revocation or acquisition that does not fall within the listed purposes or in connection therefore is *null* and *void* although this list

¹⁰ *Minister, F.C.T & Anor v Sybron Medical Centre Ltd & Anor* (2020) LPELR – 51168.

¹¹ *Ibid.*

¹² *Goldmark Nigeria Limited and Ors, v Ibafor Company Limited* (2012) 10 NWLR (Pt. 1308) 291; *Ononju v A. G. Anambra State* (2009) 10 NWLR (Pt. 1148) 182; *Lagos State College of Education v Edun* (2004) 6 NWLR (Pt. 870) 476.

¹³ Section 28 (6) of the Act.

¹⁴ Section 28 of the Act.

¹⁵ Section 50 of the Act.

has been held not exhaustive as the word “includes” in section 50 (1) of the Act has the tendency of widening the scope of the concepts covered by the term “public purposes” although not to narrow its meaning¹⁶.

The failure of the Act to give a definite definition of what public purpose entails has led to revocation of properties arbitrarily thereby subjecting the masses to all kinds of negative impacts associated with revocation. Be that as it may, most of the lands compulsorily acquired have not been utilized for public interest but rather diverted to serve private individuals and settlement of political scores. Revocation of property must be done in accordance with the provisions of the Act, the effect of non-compliance is invalidation of the revocation by a court of competent jurisdiction.¹⁷ This was clearly stated in *Olatunji v Military Governor of Oyo State*,¹⁸ where his Lordship expressed the view thus:

... if a property is ostensibly acquired for public purposes and it is subsequently discovered that it has directly or indirectly been diverted to serve private need, the acquisition can be vitiated. The acquiring authority cannot rob Peter to pay Paul by diverting one citizen of his interest in a property by vesting same in another.

In the above case, the State clearly failed to state the purpose for which the property was acquired. Waddington, J., in *Chief Commissioner, Eastern Province v S.N. Ononye*¹⁹ stated thus:

the notice merely states “for public purposes” and I find it difficult to understand why the particular public purpose is not stated. When the matter comes into court it has to be admitted that there is no public purpose involved at all; and the impression is liable to be conveyed, no doubt erroneously, that there was something ulterior in the failure to make the purpose public.

It is implicit by the court’s pronouncement in the cases cited above that the grounds for which a property is to be revoked or be acquired must be communicated to the holder of a right of occupancy. The holder is not entitled to speculate the grounds upon which his property is revoked. The essence is for the landowner to challenge such actions if need be.²⁰ In other jurisdictions like Ghana, where the purpose for which a particular land was revoked failed, the owner of the revoked property is given the first option to repurchase the property.²¹ But this is not the case in Nigeria, some properties have been acquired which were not utilized for a public purpose but eventually redistribute. The Act should be amended to include the option of repurchase by the displaced owner. This will enable the Governor to ensure equity and fair play in land revocations and acquisitions.

Compensation

The law is that where land is acquired compulsorily by the government for public purpose, compensation is required to be paid to the deprived owner to ensure that he is put in his former position before such deprivation.²² There should be a balance between protecting the interest of the public in creation of amenities, and protection of private or individual property rights. This is to ensure that an individual is not punished for the sake of majority, and to cushion the effect of land acquisition which includes displacement of owners from their homes and their businesses as

¹⁶ *Udoh & Ors, v Akwa Ibom State Government & Anor* (2013) LPELR – 21121 (CA).

¹⁷ *Abdulkadir & Anor v Mohammed* (2020) LPELR-52351.

¹⁸ (1995) 5 NWLR (Pt. 397) 586 at 602; (1994) LPELR – 14116.

¹⁹ (1944) 17 NLR 142.

²⁰ *Olatunji v Military Governor of Oyo State* (*supra*) 31.

²¹ Section 235 (5) Ghana Land Act 2020; Article 20 (6) of the 1992 Constitution of the Republic of Ghana.

²² Section 29 of the Act; section 44 of the 1999 Constitution (as amended).

well as other means of livelihood. Acquisition of land for public purposes²³ without adequate compensation is not only unjust but a violation of the property rights guaranteed by domestic as well as international instruments.

Resettlement:

Section 33 of the Act makes provision for an option to accept resettlement in case of revocation of right of occupancy that is in lieu of monetary compensation. This is though only applicable where revocation touched on residential building. Unfortunately, this option is rarely explored as it is subject to the discretion of the Governor or Local Government whether or not to make provision for an alternative accommodation.

Settlement of disputes regarding adequacy of compensation:

Where there is a dispute as to the amount of compensation calculated in accordance with the provisions of section 29 of the Act, such dispute shall be referred to the appropriate Land Use and Allocation Committee.²⁴ The jurisdiction of the High Court which ordinarily is a court of coordinate jurisdiction is ousted under section 47 (2) of the Act. This provision precludes an aggrieved party who is dissatisfied with the quantum and adequacy of compensation paid to him from approaching the court to air his grievances.²⁵ This notwithstanding, there are good number of cases which now firmly establish that the provisions of section 47 (2) of the Act are inconsistent with the provisions of section 272 (1) of the Constitution which confers unlimited jurisdiction on the State High Court.

Despite the procedures enumerated and discussed above, one can conclude that there is no robust legal provision on the procedure for acquisition of land under the Act. There is no provision for planning to ascertain the right land to be revoked for people's-oriented projects. Again, the Act fails to include landowner in the acquisition process, the failure which makes it possible for Government to revoke properties arbitrarily and converting same for ulterior motives. Not even at the point of valuation is the landowner involved in negotiating adequate compensation due to him. The only redress he would have had to make good his grievances is also deprived of him by the Act which ousted the jurisdiction of the Court to entertain issues bordering on the adequacy or otherwise of quantum of compensation due him²⁶ and vesting same on the Land Use Allocation Committee.²⁷

The failure of the Governor to comply with the procedure for compulsory acquisition results to negative outcomes which if challenged renders the Governor's act illegal, *null* and *void* and may lead to forfeiture of the property. But property forfeiture alone does not deter the Governors from violating the provisions of the Act, a more stringent punishment such as sanctions would be considered alongside forfeiture of the property to deter abuse of office.

Rascality of Governors

By virtue of section 1 of the Act, the Governor is entrusted with the power to manage and administer land in every State in Nigeria. The Governor under section 28 of the Act also reserves the right of compulsory acquisition of land for overriding public interest, in this case, for the benefit of all Nigerians. However, this power has been subjected to abuse by some Governors as

²³ Section 51 of the Act defines public purposes.

²⁴ Section 30 of the Act.

²⁵ *Benue State Urban Development Board & Ors v Asuakor & Anor* (2019) LPELR – 47233 (CA).

²⁶ *Ibid.*

²⁷ Section 2 and 30 of the Act respectively; *Controller General of Prisons & Ors v Elema & Anor* (2021) LPELR – 56219 (SC).

custodians of land within their States. The recent trends, as have been outlined in this article, show that some of the Governors have used the powers bestowed upon them for the benefit of themselves, their cronies and most importantly to settle political scores or as vendetta against their political opponents. These issues are going to be considered under different heads hereunder.

Reallocation of Revoked or government land to private individuals:

One of the issues that calls for contention in compulsory acquisition or revocation of property under the Act is whether the revoked property was actually utilized for the purpose for which it was acquired or revoked. This purpose ought to be for the common good of the people. Some revoked properties have been challenged in courts on ground of failure to meet the desired goal for which it was revoked, or for failure to meet the requirement of public purpose. The use for which a property must be put to therefore must be actualized before revocation is carried out.²⁸ In the United Kingdom, the procedure for compulsory acquisition requires that the acquiring authority must ensure an existence of a scheme that requires it to acquire other people's land, before it may resolve to make a Compulsory Purchase Order for that scheme.²⁹ The acquiring authority is quite distinct from approving authority and without such statement of purpose, the Minister, who is the approving authority cannot confirm the compulsory purchase order.

In Nigeria, what is witnessed in practice is a situation where the government has no plan or scheme in the first place before revocation. That is the only reason why revocation of a particular property cannot be utilized, for if there is a proper plan in the first place, then there must be proper implementation of that particular purpose. Government must have plans of project for the common benefit of the people before embarking on revocation and the purpose for such revocation must be utilized within a specific/ied period of time. This is to further prevent Governors from abusing their offices by using the massive powers bestowed on them to amass massive land for themselves and their cronies or private individuals all in the name of public purpose. Mostly in recent years more than ever before, land is being revoked by State Governors, and reallocated to themselves, their family members and election supporters.³⁰

Power of eminent domain as a tool to settle political scores or as vendetta:

Recent developments in the country have witnessed Governors in one administration, who have granted Certificates of Occupancy to both themselves and their cronies, becoming the target of the next administration. In Edo State, the Governor Oshiomole's administration witnessed a grant of Certificate of Occupancy to his Deputy Governor, Mr. Obudu, and to some private individuals which he referred to as parting gift to them during the pendency of his tenure. When Governor Obaseki took over, there was no delay in his revocation of those Certificates of Occupancy granted by Oshiomole's administration to his deputy and his other political friends.³¹

Similarly, Governor Rochas Okorocha, during his tenure as the governor of Imo State, allegedly acquired ten (10) properties belonging to the State Government to himself and his family members, while he was governor of Imo State for eight years.³² Governor Hope Uzodimma, his predecessor,

²⁸ Section 28 (2) (a) of the Act.

²⁹ Section 11(2) (b) of the Acquisition of Land Act 1981.

³⁰ Chinonso Alozie, 'Breaking: Court Orders final forfeiture of Okorocha's property'. *Vanguard Newspaper*, () <<https://www.vanguardngr.com/2021>> accessed 11 August, 2021.

³¹ Kayode Oyero, 'Why Edo revoked C-of-O of 11 properties Oshiomhole 'gave' associates' *Punch Newspapers*, (25 March 2021) <<https://punchng.com>> accessed 28 August, 2022.

³² A-G Imo State v. Gov. Rochas Okorocha Unreported, Suit No: HOW/947/2019, Hon. Justice T. N. Nzeukwu, Charles Ogugbuaja and Collins Osuji, 'Court Orders Final Forfeiture of Okorocha's Property to Imo Government' *The Guardian*, <<https://guardian.ng/news/court-orders-final-forfeiture-of-okorochas-property-to-imo-govt/>> accessed 28 August, 2022.

through the then Attorney General and Commissioner of Justice, Chief Akaolisa, filed an application in the State High Court seeking for an order of forfeiture of ten properties listed as owned by Senator Rochas Okorochoa's family.³³ Justice Fred Njemanze, sitting in Owerri High Court, on Monday 9th of August, 2021, ordered the final forfeiture of those properties allegedly owned by former Governor of Imo State, Senator Rochas Okorochoa and his family members to the State Government. According to his Lordship, there was no concrete verifiable reasons why a final and absolute forfeiture order should not be given in favour of the Imo State government. The Royal Spring Palm Estate, which was said to have been converted to a relaxation point for Okorochoa's friends and Rochas Foundation Orji among numerous others were subsequently returned to Imo State Government.³⁴

In another development in Rivers State, Nyeson Wike revoked a right of occupancy allegedly belonging to his predecessor Rotimi Amaechi, covering a hotel allegedly used in rigging election in that state.³⁵ In Benue State,³⁶ the State Governor also allegedly converted acquired land for private uses.³⁷

From the foregoing, it is obvious that the State governors use the power bestowed on them by virtue of sections 1 and 28 of the Act as vendetta, against their political opponents.³⁸ It therefore becomes a feud in which the incumbent governor of a State, seeks vengeance on his predecessor. This is a trend which has been occasioned by the massive power given to the Governor under the Act. The arbitrary use of this massive power by Governors is what the legislature has to reconsider and revisit in order to amend this unscrupulous power given to the Governor.

Incessant revocation of properties without notice:

As has been dealt extensively under procedure, the Governor of a State has the mandate to give notice to the title holder to inform him of the need for the revocation of his property. This notice must also include the purpose for which the property is desired in the first place.³⁹ This procedure is contained in section 44 of the Act. In *Adole v Gwar*,⁴⁰ the court could not find any evidence to show that the title holder was served with notice of revocation. In *Olomoda v Mustapha*,⁴¹ the appellant had given the 3rd and 4th Respondents notice of change of address as No 5 Abaji Close, Adewole Estate, P.O.Box 4749, Ilorin but despite the notice of change of address to the Respondents, notice of revocation was not served on that address but former address of the title holder. The notice was held to be a none starter.

The Governor in exercising his power of revocation must comply with the provisions of the Act, particularly with regard to giving of adequate notice of revocation to the holder of the right of occupancy. The purpose of giving such notice is to duly inform the holder of the steps being taken

³³ Chinonso Alozie, 'Breaking: Court Orders final forfeiture of Okorochoa's property'. *Vanguard Newspaper*, (9 August 2021) <<https://www.vanguardngr.com/2021>> accessed 11 August, 2021.

³⁴ *Ibid.*

³⁵ Jimitota, Rivers: Revocation of Land title as Political Weapon" < <https://www.vanguardngr.com/2017/08/rivers-revocation-land-title-political-weapon/>> accessed 02 January 2023.

³⁶ Peter Duru, *Vanguard* 'Benue Government Revokes Suswanm's Property in Makurdi', <<https://www.vanguardngr.com/2015/11/benue-govt-revokes-suswams-property-in-makurdi/>> Accessed 2 January, 2023;

³⁷ Bertram Nwannekanma, *The Guardian Newspaper* 'Experts Decry State Govts Conversion of Acquired Land for Private Uses', <<https://guardian.ng/property/experts-decry-state-govts-conversion-of-acquired-land-for-private-uses/>> accessed 2 January, 2023.

³⁸ Adeyinka Adedipe, 'Edo Demolition: Obaseki revoked his C of O, says SSG', *Punch Newspaper*, (26 march 2021) <<https://punchng.com/edo-demolition-obaseki-revoked-his-c-of-o-says-ssg/>> accessed 28 August, 2022.

³⁹ *Matthesman (Nig.) Ltd v Assea Brown Boveri Ltd (Abbeng Ltd) & Anor* (2021) LPELR -55190.

⁴⁰ (2008) LPELR S.C 302/2002.

⁴¹ *Usman Kayode Olomoda v Mr. Olaniyi Mustapha & Ors* (2019) or (2009) SC 355.

to extinguish his right of occupancy. Failure to give notice of revocation of the right of occupancy renders such purported revocation ineffectual.

Revocation on ground of a breach:

Apart from revocation of property for overriding public interest, a Governor may revoke a right of occupancy on the ground of a breach of any of the covenants contained in a Certificate of Occupancy⁴² or in any special contract made under section 8 of the Act. The question here is whether or not the Governor has a duty to follow the laid down procedure for revocation of a right where there is a breach of the covenants. The answer to this question is in the positive. Even when a breach of any of the clauses contained in the Certificate of Occupancy is a reason behind revocation of rights of occupancy, the Court has held that revocation or forfeiture of such rights is not automatic but must follow due process. In *Majomi & Ors v Hon. Minister, FCT & Ors*,⁴³ it was stated thus:

The Land Use Act requires that even where a breach capable of leading to a forfeiture of a right is committed, a notice ought to be issued signifying revocation of a right. It is essential for the purpose of the law, that the positive act of revocation be communicated to the title holder, because rights in a land do not revert back automatically, that is not how the law operates. The necessary lawful steps of revocation and communication of such, in accordance with sections 28 (6) and 44 of the Land Use Act have to be complied with before any right can be validly transferred to another person, and where that is not done, any transfer so done is null and void, and the reason for that is, '*nemo dat quod non habet*.'⁴⁴

On Thursday, September 21, 2023, the Federal Capital Territory⁴⁵ Secretary, Olusade Adesola released a statement wherein it was disclosed that the Minister of FCT had in exercise of the powers under sections 28 (5) (a) and (b) of the Act revoked the Certificates of Occupancy over 167 plots of land located in the various districts of the FCT, etc. The revocation was premised on non-development and/ or failure to submit building plans for approval. It is important to state that the Governor's power to revoke any right of occupancy is not absolute, therefore, even when the Certificate holder has not complied with the terms of the grant, sections 28 and 44 of the Act must be complied with. It is expected that the Minister must have served the title holder adequate notices in compliance with section 44 of the Act and that the revocation is in line with section 28 also. The Act however did not state the duration of notice to the holder or whether he still has the opportunity to remedy the breach. Some State Governors have indulged in demolition of properties without exhausting legal options which shows abuse of powers conferred on them and most often than not this demolition is in violation of court orders.

Illegal Demolition in the face of Court Order

One may ask where the judiciary is while such mishaps are happening or while such demolition and abuse of the Act. Many cases have gone to court to stop the Governors from either demolishing or revoking properties arbitrarily or to maintain the *status quo*. But many a time, such orders have been violated or ignored. Some orders are flouted by the politicians or government. The Supreme Court in the *Military Governor of Lagos State & Ors v Chief Emeka Odumegwu Ojukwu & Anor*, noted the dangers inherent in government's disregard for the rule of law, otherwise known as contempt of law thus:⁴⁶

⁴² Section 10 of the Act.

⁴³ (2018) LPELR -44446.

⁴⁴ *Ibid.*

⁴⁵ FCT.

⁴⁶ *The Military Governor of Lagos State & Ors v Chief Emeka Odumegwu Ojukwu & Anor* (1986) All N.L.R. 233.

If Government treat court order with levity and contempt the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law. If anyone should be wary of orders of court it is the authorities, for they, more than anyone else, need the application of the rule of law in order to govern properly and effectively. Per Uwais, J.S.C

Contempt of court simply means willful disobedience to judgments or orders of the court. Many State Governors have been in contempt of Court due to its willful disobedience and obstruction of lawful orders of court. A court may give an order directing a person to carry out certain act or refrain from carrying out a particular act. Failure to heed or abide by the directive of or obey such court orders is a serious breach of court's jurisdiction and contemptuous.

In *Military Governor of Lagos State & Ors v Adebayo Adeyiga & Ors*,⁴⁷ a declaration that members of the Shangisha Landlords Association whose lands at Shangisha village were demolished by the Lagos State Government during the period of June 1984 to May 1985 are entitled to the first-choice preferential treatment by the Lagos State Government in doing away with the property, was flagrantly disobeyed by the Lagos State government and have not been complied with up till date. In another development, the order of the court which ordered the displaced Imo indigens whose land was grabbed by Okorocho Rochas, which order empowers the indigens to reclaim their land was met with resistance. It was reported that military personnel numbering over 25 were on site to prevent the land owners forcefully, from reclaiming their land by police officers who supposed to enforce the order of the court.⁴⁸

The *Punch Newspaper*⁴⁹ of Saturday, August 26, 2017 also reported of bulldozers which were accompanied by a horde of armed security operatives, acting on the orders of the Imo State Governor, Rochas Okorocho, which stormed Eke-Ukwu Owerri Market in Imo State, and forcefully evicted the traders, demolished their shops and destroyed wares worth millions of naira. This action was in total disregard to an Imo State High Court restraining order against the State from destroying, relocating or tampering with the market. Similarly, Okorocho had in July, 2017, demolished the Shell Camp Quarters, inhabited by serving and retired Lecturers of Alvan Ikoku Federal College of Education, despite a subsisting court order. Not only are court orders brazenly flouted by this government, there was substantial evidence that the cleared land was not used for any development purposes, but rather, reallocated to political cronies⁵⁰.

In Lagos State, a report was published where the plaintiffs, Admiralty Fleet Limited (BICS Garden), and a retired Naval officer, Admiral Festus Porbeni had in suit number FHC/L/CS/1384/21, asked the court to restrain, the Attorney-General of Lagos State, and the Lagos State Special Task Force Unit from allocating any portion of the parcel of land, building or enter into the disputed property located at B20, Wole Olateju Crescent, Lekki Phase 1 in Eti-Osa Local Government Area, pending the hearing of the substantive suit. But barely few days after the Federal High Court sitting in Lagos restrained the Attorney General and Commissioner for Justice, Lagos State from allocating any portion of the property, the State invaded the premises and

⁴⁷ (2002) SC. 112.

⁴⁸ Akachi Demolished in Owerri by The Land Owners Via Court Order: [Google.com/amp/s/universalreportersing.com/akachi-demolished-in-owerri-by-land-owners](https://www.google.com/amp/s/universalreportersing.com/akachi-demolished-in-owerri-by-land-owners). Accessed on 1 January, 2022.

⁴⁹ [Google.com/amp/s/punching.com/okorocho-illegal-demolition-of-owerri-market-PunchNewspaper](https://www.google.com/amp/s/punching.com/okorocho-illegal-demolition-of-owerri-market-PunchNewspaper). Accessed 10 March, 2022.

⁵⁰ *Ibid.*

demolished the property in violation of the court order.⁵¹ Also, in February 2021, Honourable Justice Ogunsanya of the High Court of Justice, Ikeja, ordered the parties in a suit filed by Olorunda-Oyinlola market men and women to maintain the *status quo* pending the hearing of the Motion on Notice for Interlocutory Injunction by the Claimants in the suit.⁵² Thousands of traders of Oyinlola/ Olorunda Market, Festac in Amuwo-Odofin Local Council Development Area, Lagos State, were displaced despite court's order to maintain the *status quo*.

The case of the settlers of Otodogbame cannot be left out in this discussion. Justice Onigbanjo of the High Court of Lagos State had noted that it was unconstitutional for the government to forcefully evict the settlers without providing an alternative settlement. His Lordship therefore gave an order halting further actions but the officials of the State government stormed Otodogbame and began fresh demolition of structures and shanties within the community.⁵³

In the recent past too,⁵⁴ the *Thisday Newspaper* online, published a report of a firm, Avastone Global Service Limited, whose property was allegedly illegally demolished by the then Minister of the Federal Capital Territory (FCT), Mohammed Bello, despite a valid and subsisting judgment of a court of competent jurisdiction in a Suit marked CV/2257/2020 assigned to Justice V.S. Garba of the High Court of the FCT, Gwagwalada Division, holden at Kwali. The Court had earlier, after proper consultation of the case of the Claimant, entered judgment in its favour and made the following orders: a Declaration that the demolition notice issued by the 2nd and 3rd defendants for demolition of Plot 1186 Katampe Extension, Cadastral Zone B 19, Abuja is oppressive, illegal and unconstitutional; an order of perpetual injunction restraining the defendants in this suit from demolishing the structure/buildings erected on Plot 1186 Katampe Extension, Abuja; and an Order of the Court directing the 2nd and 3rd Defendants to restore the building plan approved and withdraw the demolition notice over Plot 1186, Katampe Extension, Abuja.

But not up to one month after the delivery of this judgment was the structure demolished and vandalized in flagrant disregard and disobedience of the valid and subsisting judgment of the Court. This demolition took place despite the fact that the Respondent was properly served with the originating court processes, fully represented by a Counsel of their choice who was equally present on the Day of Judgment and fully participated in the proceedings.

It is indeed wrong and unconstitutional for government to forcefully eject Settlers who have been in occupation of a parcel of land for quite some years without giving them notice or making an alternative plan for re-settlement. The Supreme Court in *Omoijahe v Umoru*⁵⁵ clearly made it known that it is indeed justice itself that is being flouted by contempt of court, and not the individual court or the judge who is attempting to administer justice.⁵⁶ The judiciary needs no interference from the executive so as to ensure sanctity of judgment and orders of the court. Any interference from government will usually work against the administration of justice. No single individual or government is above the law, and for courts to do justice, their power to administer

⁵¹ Wale Igbinade, 'Lagos Flouts Court Order, Demolishes Rtd Admiral's Property' <<https://www.sunnewsonline.com/lagos-demolishes-property-against-court-order/>> accessed 20 February, 2022.

⁵² Bose Adelaja, <<https://www.vanguardngr.com/2022/02/festac-demolition-traders-petition-sanwo-olu-over-contempt-of-court/>> accessed on 11 March, 2022.

⁵³ Ben Ezeamalu, 'Lagos govt appeals court judgement, defends demolition of Otodogbame', <<https://www.premiumtimesng.com/>>. accessed on 11 March, 2022.

⁵⁴ Alex Enumah, 'Alleged Illegal Demolition: FCT Minister Gets Seven Days Ultimatum to pay N2bn compensation' <<https://www.thisdaylive.com/index.php/2022/01/25/alleged-illegal-demolition-fct-minister-gets-seven-days-ultimatum-to-pay-n2bn-compensation/>> accessed on 13 March, 2022.

⁵⁵ (1999) LPELR – 2645 (SC).

⁵⁶ *Adeyemi v Esther Edigin* (1990) LCN/0101 (CA).

justice without affront or interference by anyone especially those in authority must be pursued. It is a violation of the constitution and abuse of power for a government to be in flagrant disobedience of court orders which invariably will lead to loss of faith in government.⁵⁷

The incessant demolition of properties and disobedience to court orders also amount to violation of the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which provides that no one may be deprived of his property; (this includes demolition of properties)⁵⁸ except as provided for under the law. Obedience to court orders or judgments is fundamental to the maintenance of social order, and as argued by a Canadian judge:

To allow court orders to be disobeyed would be to tread the road towards anarchy.

If the orders of Courts can be treated with disrespect, the whole administration of justice is brought into scorn Loss of respect for the Courts will quickly result in the destruction of our society.⁵⁹

It has been observed that enforcement of court orders against government is hardly possible especially when it comes to orders or judgment against demolition of properties. This article advocates that government agencies in the form of Police, who indulge in carrying out illegal demolition even in the face of court orders be punished as contemnors so as to make it possible for court to purge itself. Judiciary should also be fully independent for as long as the judiciary is appointed by the government, and so long as judiciary salaries come from the State, contempt of court by the executive arm of government will never be a thing of the past.

Public Participation in Deciding People's Oriented Projects

Public participation simply means the involvement of different groups of stakeholders in a process of participation or decision-making process. Compulsory acquisition for public infrastructure project requires stakeholder's input, in fact, the people's Oriented Projects ought to begin and end with stakeholder's inputs. It therefore naturally follows that, every form of compulsory acquisition should be made open to all stakeholders and to any interested party – landowners, tenants, mortgagees, community, the general public, *et cetera* who equally participate in deciding whether or not the project is desirable. According to Brockner,⁶⁰ “the original landowner is a powerful stakeholder and therefore her participation in the compulsory purchase process needs to be reviewed, so as to minimize the dissatisfactions of the landowner and to harmonise the process,” and to ensure that the purpose which will lead to deprivation of property is such that the community approves off. Where it is impossible to achieve this due to tendency of involving large groups, the representatives may be available and involved from planning to execution of projects.

Ordinarily, compulsory acquisition is carried out for the purpose of community development. It therefore follows that the stakeholder's involvement in the process is necessary to ensure equity and purposive acquisition, as they want to be informed in detail, the purpose for compulsorily taking a private property for public use. Interactions between these parties to ensure peoples'-oriented project are very necessary and this is primarily needed at the planning stage, to getting stakeholders' stake in the compulsory acquisition project. In practice, the stakeholders for whom such development is meant for are usually sidelined or sidetracked. The forceful nature of

⁵⁷ *Military Governor Lagos State v Ojukwu* (1986) All NLR 233.

⁵⁸ *APC & Ors v Karfi & Ors* (2017) LPELR – 47024 (SC); *FCDA & Anor v KUDA Engineering & Construction Company Ltd. & Ors* (2014) LPELR -22985 (CA).

⁵⁹ *Canada Metal Company Co. Ltd v Canadian Broadcasting Corporation* [1975] 48 D.L.R. 3d 649, 669.

⁶⁰ Brockner, J. (2002), Making Sense of Procedural Fairness: How high Procedural Fairness can Reduce or Higher the Influence of Outcome Favourability, *Academy of Management Review*, 27 (1), 58 – 76, http://www.jstor.org.ezp.lib.unimelb.edu.au/stable/413469?seq=1#page_scan_tab_contents, accessed 2 November, 2023.

compulsory acquisition does not ordinarily make room for public participation more especially the one that involves the landowner, be that as it may, public participation is necessary to obviate the case of violating the purpose of acquisition and to win the trust of the government.

Once the public is involved in compulsory acquisition decision making process, ensuring that the compulsory acquisition purpose is limited to public uses and is indeed applied to public use, - the negative impact of compulsory acquisition on land owners and the community may not be so much unbearable. Where the land owner or the stakeholders are to benefit from, agree or decide on the project, subject matter of compulsory acquisition, they may not necessarily frown at the act of compulsory acquisition. A private or community land cannot be acquired to the detriment of the individual and national economy hence the need for public participation.

The above notwithstanding, one major advantage of public participation in compulsory acquisition is to fill the gap of non-participation and prevent the routine use of compulsory acquisition to take land from landowners and applying it as political vendetta and conversion to cronies instead to advancement of projects for public use.

The Act makes no provision for public participation in compulsory acquisition project not bearing in mind that the essence is for the public. There is need for legislative intervention, to include public participation in compulsory acquisition process. It therefore behooves on the legislature to amend the Act to include public involvement in ascertaining and ensuring that the property acquired is not diverted for private use or for Governor's overzealous purposes. Public inclusion in the process of compulsory acquisition will help to reveal the community's purposes and desires, and achieve the sole aim of the government which is provision of social amenities and infrastructure.

According to Brockner,⁶¹ "unfavourable outcome (acquisition of land) accompanied by non-participatory (or unfair) procedure makes the decision maker (the government) much more blameworthy and land owners feel disenchanted from development activities proposed on their land. Therefore, the process might appear fairer to stakeholders if they are involved in the decision-making process."

Conclusion

There is a lacuna in the provision of the Act for penalty or punishment to anyone who has converted people's properties or State properties to himself or used such properties otherwise than for purposes under the Act or any other law. Apart from forfeiture of such property illegally acquired,⁶² there is need for legislative intervention to include punishment for such abuse.

The conditions under which a Governor can exercise his powers of revocation are well stated in *N.U.T & Anor v Bukar*.⁶³ The dictum of the Supreme Court, *per* Kalgo JSC in *Nigeria Engineering Works Ltd v Denap Ltd & Anor*⁶⁴ is very apt at this juncture: the power to revoke any statutory right of occupancy under section 28 of the Act was granted to the Governor in his official capacity and is therefore a public right the exercise of which constitutes a public act in the public interest. It is not and cannot be a private act in the interest of the person of the Governor himself.⁶⁵ In this regard,

⁶¹ *Ibid.*

⁶² Chinonso Alozie, 'Breaking: Court Orders final forfeiture of Okorocho's property'. *Vanguard Newspaper*, <<https://www.vanguardngr.com/2021>> accessed 11 August, 2021.

⁶³ (2021) LPELR – 56149.

⁶⁴ (2001) LPELR- 2002.

⁶⁵ *Ibid.*

revocation of private property by the Governor for superfluous purposes ss not within the powers granted to the Governor under the Act and should not be entertained.

Section 1 of the Act is long overdue for amendment. A law can only be conceived as legitimate when it caters for the general will of the people as well as to their common good. The Act is no longer serving the common good of the people. The clamor for amendment of the Act is long overdue and should be given heed to, in order to move the socio-economy of the people and State, forward.

Recommendations

1. Apart from other recommendations in the body of this article, urgent consideration should be given to repealing the Land Use Act 1978 and enacting comprehensive legislation that addresses the shortcomings identified in this article to incorporate safeguards against abuse, ensuring a more transparent and accountable process of compulsory land acquisition.
2. There is need for inclusion of public participation to compulsory acquisition of land process in Nigeria. Engaging citizens in decision-making regarding people-oriented projects will contribute to the identification of genuine public needs and help prevent the diversion of acquired land for extraneous purposes.
3. This is to obviate the conversion of acquired properties to private use or as vendetta against political opponents by the Governor; and violation of other provisions of the Act. The public involvement in deciding whether or not the people are in dire need of a particular project will make the compulsory purchase process more inclusive and participatory, thereby leading to acceptance and harmony.
4. Establishing independent body to monitor and review the exercise of compulsory acquisition powers by Governors is required to prevent arbitrary actions, ensuring that land acquisition is carried out in the public interest and not for personal or political motives.