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COMPULSORY ACQUISITION AND COMPENSATION IN NIGERIA:

AN APPRAISAL OF THE LEGAL FRAMEWORK

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COMPULSORY ACQUISITION AND COMPENSATION IN NIGERIA: AN APPRAISAL OF THE LEGAL FRAMEWORK

1. Introduction

The right to acquire and own immovable property is one of the fundamental rights guaranteed to every Nigerian citizen.[1] That guarantee is not, however, absolute. Government at every tier retains the power of eminent domain the authority to take private land for public purposes provided the taking is sanctioned by law and accompanied by prompt payment of compensation. In Nigeria, this power derives its constitutional legitimacy from section 44 of the 1999 Constitution and finds its principal statutory expression in the Land Use Act 1978.[2]

The tension between the State's developmental needs and the individual's proprietary security has made compulsory acquisition one of the most litigated areas of Nigerian land law. This article examines the constitutional and statutory framework governing compulsory acquisition and compensation, evaluates the leading judicial authorities that have shaped the doctrine, draws limited comparison with the position in the United Kingdom and the United States, and identifies the structural weaknesses that continue to generate disputes between acquiring authorities and dispossessed landowners.

2. The Constitutional Guarantee and its Limitation

Section 43 of the Constitution guarantees every citizen the right to acquire and own immovable property anywhere in Nigeria. Section 44(1) then supplies the conditions under which that right may be displaced, no property shall be compulsorily taken possession of, and no interest in or right over property shall be compulsorily acquired, except in the manner and for the purposes prescribed by a law that, among other things, requires the prompt payment of compensation and gives the person affected a right of access to a court or tribunal for the determination of his interest and the amount of compensation.[3]

Three conditions therefore emerge from section 44, the acquisition must be authorised by law; it must be for a purpose recognised by that law; and it must carry an obligation of prompt compensation together with a justiciable right of access to court. Any purported acquisition that fails to satisfy these conditions is void. The Court of Appeal affirmed this position in **Okon**

[1] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 43. This right must be read together with s 44, which qualifies it by permitting compulsory acquisition subject to strict conditions, so that the two sections operate as a single protective scheme rather than independent guarantees.

[2] Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004 (originally Land Use Act, Decree No 6 of 1978). The Act was promulgated by military decree and subsequently entrenched by s 274(5) of the 1979 Constitution (now s 315(5) of the 1999 Constitution), giving it a quasi-constitutional character notwithstanding its status as ordinary legislation.

[3] Constitution, s 44(1)(a)-(b). The provision is closely modelled on similar guarantees in earlier Nigerian constitutions and, more distantly, on the 'due process' and 'just compensation' formulations found in comparable constitutional systems, discussed in section 5 below.

v Enyiefem, holding that a compulsory acquisition carried out in disregard of the constitutional requirements is unlawful and of no effect.[4]

3. The Statutory Framework: The Land Use Act 1978

3.1 Vesting of Land and the Governor's Power of Revocation

Section 1 of the Land Use Act vests all land within a state, other than land already vested in the Federal Government or its agencies, in the Governor, who holds it in trust for the use and common benefit of all Nigerians. This vesting provision converts what were, before 1978, freehold and other proprietary interests into rights of occupancy held of the Governor, fundamentally restructuring Nigerian land tenure.[5]

Because all land is held on behalf of the Governor, what a private holder possesses is not radical title but a right of occupancy, which the Governor may revoke under section 28 of the Act for 'overriding public interest'. Section 51 of the Act defines overriding public interest to include the requirement of the land by the Government for public purposes, its requirement for mining or oil pipeline purposes, and its requirement for extraction of building materials.[6]

The Supreme Court settled the constitutional status of the Act in the seminal case of ***Chief R. O. Nkwocha v Governor of Anambra State***, holding that the Land Use Act, notwithstanding its entrenchment, remains an ordinary statute rather than part of the Constitution itself, so that where its provisions conflict with the Constitution, the Constitution prevails.[7]

3.2 Notice and Procedural Requirements

Revocation of a right of occupancy is not self-executing; it must be signified by notice, and section 44 of the Act requires that such notice be given to the holder. The courts have insisted that publication of a notice of revocation in the Government Gazette, while constituting notice to the world at large, cannot substitute for personal service on the individual holder whose interest is affected.[8] A revocation carried out without proper notice is liable to be set aside,

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[4]Okon v Enyiefem (2016) LPELR-41168(CA). The court treated compliance with the constitutional conditions as a threshold question logically anterior to any inquiry into the adequacy of the compensation offered.

[5]Land Use Act, s 1. See generally JA Omotola, Essays on the Land Use Act 1978 (Lagos University Press 1984), an early and influential critique of the Act's restructuring of customary and statutory tenure.

[6]Land Use Act, s 51(1)-(2), read with s 28(2)-(3), which separately defines overriding public interest for statutory and customary rights of occupancy. The definitions are not identical, a distinction courts have treated as significant in determining the validity of a particular revocation.

[7]Nkwocha v Governor of Anambra State [1984] 1 SCNLR 634, 652 (Eso JSC), describing the tenor of the Act as effecting 'the nationalisation of all lands in the country' by vesting radical title in the Governor. The decision remains the starting point for any analysis of the Act's constitutional standing.

[8]Olatunji v Military Governor of Oyo State (reported in [1995] 5 NWLR Pt. 397 p. 586), applied in subsequent decisions to the effect that gazette publication and personal notice serve distinct purposes and neither can dispense with the other.

since want of notice deprives the holder of the opportunity to challenge either the propriety of the acquisition or the adequacy of the compensation offered.

4. The Regime of Compensation

4.1 The 'Unexhausted Improvements' Rule

The most controversial feature of the compensation regime lies in section 29 of the Land Use Act. Where a right of occupancy is revoked, compensation is not payable in respect of the land itself but is confined to specified heads: the unexhausted improvements on the land, and, in defined circumstances, the value of crops. Because all land is deemed to belong to the Governor, the holder of a right of occupancy is treated as having no proprietary stake in the land as such capable of sounding in compensation; only what the holder has added to the land buildings, economic trees, other unexhausted improvements is compensable.[9]

A necessary consequence is that a bare, undeveloped parcel attracts no compensation at all on revocation, however valuable the land may be by reason of location or prospective use. This has been the principal source of grievance among dispossessed landowners and the focus of sustained academic criticism of the Act. The point is developed at length by Dorothy Nelson, who argues that confining compensation to unexhausted improvements defeats the constitutional promise of 'prompt payment of compensation' by leaving the most economically significant component of value the land itself uncompensated.[10]

4.2 Assessment of Compensation

Section 29(4) directs that compensation for buildings, installations and improvements be assessed on the basis of the replacement cost of the building or improvement, less depreciation, together with the current market value of the crops on the land at the date of revocation. Assessment is carried out in the first instance by the appropriate officer designated under the Act, with a right of appeal to the Land Use and Allocation Committee and, ultimately, recourse

[9]Land Use Act, s 29(1), listing the heads of compensation as (a) the land itself is excluded from compensation for a right of occupancy other than one held for agricultural purposes; compensation attaches instead to buildings, installations and improvements existing on the land at the date of revocation, assessed on the basis prescribed in s 29(4). See CN Onah, 'Legal Regime for Revocation of Right of Occupancy under the Land Use Act' (2020), noting that this structure follows logically from the vesting provision in s 1 but produces markedly different outcomes from ordinary compulsory purchase regimes elsewhere.

[10]D Nelson, 'An Examination of the Right to Compensation for Compulsory Acquisition of Land in Nigeria' Gravitas Review of Business and Property Law. Nelson's central argument is that s 29 cannot be reconciled with s 44 of the Constitution once 'compensation' is understood, as courts elsewhere have understood equivalent language, to mean the market value of what has been taken rather than merely the value of physical improvements.

to the High Court under section 30, which entitles a claimant dissatisfied with the compensation offered to have the matter determined judicially.[11]

In practice, compensation assessments have frequently lagged behind actual replacement cost, and disbursement of awarded sums is often delayed for years, further eroding their real value through inflation. Field studies on infrastructure-related acquisitions in Nigeria consistently report that compensation paid falls below the prevailing market value of what was lost, generating recurrent litigation and, in some documented cases, community resistance to acquisition projects.[12]

4.3 Judicial Interpretation

A revocation exercised for a purpose outside those recognised as overriding public interest is void, notwithstanding any compensation tendered. In ***Osho v Foreign Finance Corporation***, the Supreme Court held that a purported revocation for a purpose falling outside sections 28 and 51 of the Act could not stand, since the Governor's power of revocation is not at large but is confined to the statutory purposes.[13]

The Supreme Court's trilogy of 2012 decisions further clarified the scope of judicial supervision over compulsory acquisition, including ***Alhaji Tsoho Dan Amale v Sokoto Local Government,*** which addressed the limits of a court's willingness to interfere in a completed acquisition where the challenge is procedural rather than substantive.[14] Separately, in ***Savannah Bank v Ajilo***, the Supreme Court held that any transaction purporting to alienate an interest in land without the Governor's consent, as required by section 22 of the Act, is null and void, a ruling with significant implications for how compensation claims interact with unconsented dealings in land.[15]

5. Comparative Perspective

[11]Land Use Act, ss 29(4), 30 and 33. Section 30 preserves the constitutional right of access to court contemplated by s 44(1)(b) of the Constitution, and it is this provision that operationalises the landowner's remedy where the compensation offered is considered inadequate.

[12]See the account of acquisition disputes accompanying infrastructure development discussed by the American Association of Geographers' 2024 conference proceedings on compulsory land acquisition for infrastructure in Nigeria, which records a persistent gap between statutory compensation and market value at the point of taking.

[13]Osho v Foreign Finance Corporation [1991] 4 NWLR (Pt 184) 157. The decision is frequently cited alongside Nkwocha as establishing that revocation is a power exercisable strictly within the four corners of the Act, so that a revocation notice which discloses no recognised public purpose, or which conceals an ulterior motive, is liable to be struck down regardless of any compensation offered.

[14]Alhaji Tsoho Dan Amale v Sokoto Local Government and Others (2014) E-WRN/32 (SC), one of three Supreme Court decisions on compulsory acquisition delivered within a three-month period that year, together clarifying the circumstances in which courts will and will not disturb a completed exercise of the revocation power.

[15]Savannah Bank (Nigeria) Ltd v Ajilo [1989] 1 NWLR (Pt 97) 305. Obaseki JSC's observation in that case that the Act suffers from 'lack of precision and inelegant drafting' has been echoed by later commentators discussing the compensation provisions specifically.

Nigeria's confinement of compensation to unexhausted improvements stands in sharp contrast to the position in jurisdictions whose compulsory purchase regimes Nigeria's own law otherwise resembles.

In the United Kingdom, the *Land Compensation Act 1961* codifies rules for assessing compensation on compulsory purchase, the central rule being that the claimant is entitled to the open market value of the land taken, assessed as between a willing seller and a willing buyer, quite apart from the value of any improvements on it.[16]

In the United States, the Fifth Amendment's guarantee that private property shall not be taken for public use without 'just compensation' has been interpreted to require payment of the fair market value of the property taken. The scope of 'public use' has itself been the subject of considerable controversy, most notably in **Kelo v City of New London,** where the Supreme Court controversially upheld the taking of private homes for transfer to a private developer as part of an economic redevelopment scheme, a decision that prompted legislative reform in many American states restricting the purposes for which eminent domain may be exercised.[17]

The comparison suggests that the difficulty in Nigeria lies less in the constitutional formula, which tracks familiar 'prompt payment of compensation' language found elsewhere, than in the way the Land Use Act has narrowed the statutory content of that formula to exclude the value of the land itself.

6. Challenges in the Nigerian Compensation Regime

A number of structural weaknesses recur in literature and in practice. First, the exclusion of land value from compensation under section 29 leaves landowners without recourse for the loss of the most valuable component of what has been taken, a result difficult to reconcile with the constitutional promise of compensation for compulsorily acquired property.

Second, delay in the payment of awarded compensation is endemic, with claimants sometimes waiting years for disbursement while the real value of the sum awarded is eroded by inflation, undermining the constitutional requirement that compensation be 'prompt'.

Third, valuation disputes are frequent because the replacement-cost method prescribed by section 29(4) depends heavily on the assessor's judgment, and landowners often lack the

[16] Land Compensation Act 1961 (UK), s 5, Rule 2, which provides that the value of land is to be taken as the amount the land, if sold in the open market by a willing seller, might be expected to realise. The rule captures the full economic value of the land itself, not merely improvements upon it, the opposite starting point from s 29 of the Nigerian Land Use Act.

[17] Kelo v City of New London 545 US 469 (2005); see also Hawaii Housing Authority v Midkiff 467 US 229 (1984), upholding a land-redistribution taking as a valid public use. Both decisions concern the 'public purpose' limb of the power rather than the quantum of compensation, but they illustrate a jurisprudence in which market value compensation is taken as a given, leaving 'public use' as the primary battleground the inverse of the Nigerian position, where public purpose is comparatively settled but the quantum of compensation remains contested.

resources or information to challenge an unfavourable assessment before resorting to litigation under section 30.

Fourth, procedural lapses particularly failures of personal notice continue to generate litigation notwithstanding the clear judicial guidance in cases such as ***Olatunji,*** suggesting a persistent gap between the standard set by the courts and the practice of acquiring authorities on the ground.

7. Towards Reform

Reform proposals advanced in literature converge on a small number of themes. The most far-reaching would amend section 29 to bring the market value of the land itself within the scope of compensable interests, aligning Nigerian practice with the approach taken in the United Kingdom and reflecting a more literal reading of the constitutional guarantee in section 44. A second proposal would impose statutory time limits for the assessment and disbursement of compensation, with interest accruing on sums unpaid beyond a prescribed period, directly addressing the promptness deficit. A third would strengthen the independence of the valuation process, whether by requiring the involvement of independent professional valuers or by creating a specialised tribunal, along the lines of the Upper Tribunal's jurisdiction in the United Kingdom, to determine disputed compensation claims more speedily and with greater technical rigour than ordinary civil litigation permits.

8. Conclusion

The Nigerian law of compulsory acquisition rests on a coherent constitutional structure: acquisition must be lawful, purposive, and compensated. Yet the statutory implementation of that structure under the Land Use Act, particularly the confinement of compensation to unexhausted improvements, has produced outcomes that sit uneasily with the constitutional text and with comparable regimes elsewhere. The judiciary has been assiduous in policing the boundaries of the power of revocation itself, insisting on proper purpose and proper notice. What remains largely unaddressed is the substantive adequacy of what landowners receive once a lawful revocation has occurred. Until section 29 is revisited, prompt and adequate compensation will remain, for many dispossessed Nigerian landowners, more constitutional promise than practical reality.